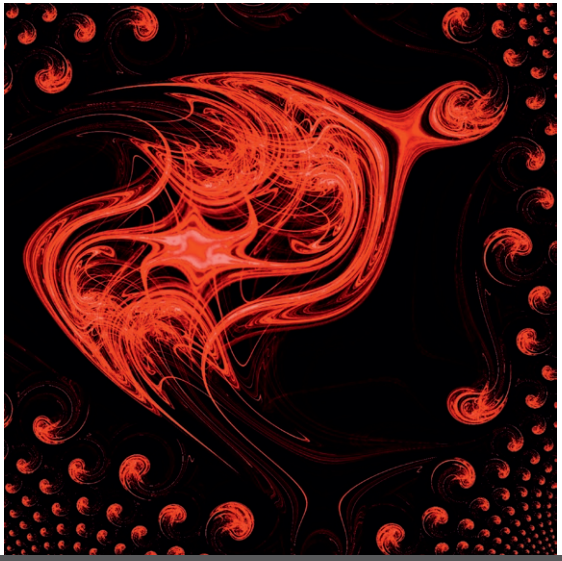
Karol Modzelewski

Barbarian Europe



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Translated by Ewa Macura

Editorial work by Elena Rozbicka

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Acknowledgements

Between 1994 and 2002 I held a series of monographic lectures titled *Barbarian Europe – From Tribes to States and Nations* at the Institute of History at Warsaw University. This book is not a transcript of those lectures. I never wrote down what I would talk about to my students, relying instead, on the spontaneity of our face-to-face interactions. I encouraged the students to interrupt me with any questions they had without waiting for the end of the lecture. Those questions, numerous and often startling, became for me a source of intellectual satisfaction and inspiration; the students helped me discern problems which had escaped detection in the academic routine. This provided a considerable stimulus for me. Without the questions my students posed, this book would not have been written. My thanks go, above all, to my students from whom I have learnt so much.

I belong to that generation of historians for whom professional contact and the exchange of ideas with scholars from abroad were often hindered. For political reasons to which I myself contributed, these obstacles accumulated. As long as I did research on Poland under the Piast dynasty, I could deceive myself that the Iron Curtain would not interfere with my work. Yet now that I have attempted to transcend the barriers that had for generations separated research on the early history of the Germanic and Slavic barbarians, the long-standing dearth of foreign contacts and texts have placed a heavy burden on my work. I cannot catch up on everything, but I would not have caught up on anything had it not been for the helpfulness of my Western colleagues. I am most grateful for the friendship of the unfailing Fiorella Simoni from the Sapienza University of Rome. Jacques Le Goff, Jean-Claude Schmitt, Girolamo Arnaldi, Giorgio Cracco, Otto Gerhard Oexle, and Peter Kriedte, all outstanding medieval studies scholars, and my colleagues and friends from France, Italy, and Germany, have generously shared their ideas, offered hospitality, and made libraries available to me. I owe them my profound gratitude.

I also thank my wife – who knows best for what.

Introduction

The political rhetoric in Poland revolves around Europe. It is difficult to find anyone in Poland who has not heard the slogans announcing our return to Europe. At the same time, and almost in the same breath, people say that we have always belonged to Europe and that we therefore, do not have to return because we are there. Despite the apparent discrepancy, these slogans are not contradictory. Having been repeatedly chanted, they become like clichés and are no longer reflected upon. It is a shame. Political slogans, like advertising spots, are worth dwelling on, not only because of what they deliberately propagate, but also because of what they unwittingly reveal.

In such slogans, Europe is obviously not a geographical concept. We are not simply talking about the European Union, either. We join the European Union, but we had never been there, so we cannot really be "returning" to it. The context in which this return is pronounced suggests that Europe signifies a certain cultural canon. Not all countries in Europe, or social movements, or intellectual trends, or political systems of a European provenance are easily accommodated in this canon. When we speak of "our return to Europe," we tacitly assume that Poland was severed from the European legacy by Soviet domination and communism. After the fall of communism, we are resuming our rightful place in the Western world. We are thus returning to our European roots, from which communism tried unsuccessfully to tear us away. Such is the sense of these slogans: on one hand, they proclaim Poland's return to Europe; on the other, they assert that Poland is and has always been in Europe. This rhetoric rests on an implicit assumption that communism was essentially alien to European culture. The same assumption has no doubt been made about National Socialism and fascism as well.

And yet, there is no doubt that communism, Nazism, and fascism are products of European history. By treating such ideologies as external phenomena foreign to the European canon, we are in a sense performing exorcisms, expelling, as it were, the Evil Other from within ourselves. As a result, the notion of European culture is not so much a descriptive category, helping to convey the complexity of a historical reality, as it is a norm, an ideal according to which we judge and select our traditions. From the selection of traditions – understood as those elements of the past we deem noble, precious, or instructive and thus worthy of inclusion into our collective self-portrait – we move imperceptibly to the other bank of the Rubicon, to ideas of the "real" genealogy of European civilization. According to

these ideas, our civilization was shaped by the legacy of the classical Greek and Roman cultures, Christianity, and the universalist organization of the Church. It was precisely Christianization which incorporated the Germanic, Slavic, Baltic, and Finno-Ugric peoples into the realm of the classical Mediterranean culture that the Church had both inherited and propagated.

This view has reigned supreme within popular historiography, yet it is stricken with partiality. What make it objectionable are not the particular claims it upholds but the particular facts it leaves out. Reducing the roots of Europe to the Mediterranean heritage and Christianity, we grossly simplify European genealogy and create the impression of homogeneity. This is a dangerous illusion, especially at a time when economic globalization goes hand in hand with an intellectual standardization that has a tendency to ignore the cultural complexity of the world and to vulgarly treat world history in a standard way.

It might, therefore, be worthwhile to recall that classical culture, understood as the beginning of the genealogical tree of Europe, was not homogeneous. Apart from its Greek and Roman ingredients, it also incorporated the Hellenic civilization which disseminated despotic elements of the ancient Eastern traditions within the late Roman Empire, especially in Byzantium and the Byzantine Church. The conviction that these traditions do not fit the European canon gave rise to ideas limiting the genealogy of European culture to the realm of Latin Christianity. Were these ideas true, though, one would have to relinquish all reference to the legacy of classical culture, because this legacy can more easily be found within the Hellenic civilization of Byzantium than within the empires of Charles the Great or Otto I. For this reason I support the view held by Jacques Le Goff who sees the most profound and long-lasting division of Europe in the two trends of the classical tradition (Latin and Hellenic) and in the corresponding schism of the Church.[1] Yet what has also greatly influenced the face and cultural complexity of Europe was the legacy of the peoples from outside the Mediterranean realm who inhabited the territories beyond the limes of the Roman Empire, that is, east of the Rhine, north of the Alps and beyond the Danube. The Romans had one collective name for all these regions – *barbaricum*.

The barbarian peoples had come under the influence of Mediterranean civilization already in late antiquity. There is no doubt, either, that Christianization, usually concurrent with a transformation of the political system, played a crucial role in the imposition on or adoption by these peoples of the models of classical culture. This does not mean, however, that the holy water of baptism washed

1 Le Goff, *La vieille Europe*, passim.

away the original sin or the legacy of the traditional cultures of the Germans, Slavs, or Balts. Such an understanding of a new beginning whereby traditional tribal societies dispose of the cultural baggage of their past and are transformed into civilized heirs of Rome should not be advanced by any historian.[2]

The Celtic, Germanic, Slavic, Finno-Ugric, and Baltic peoples entered the realm of Mediterranean civilization at different historical moments and under highly varied circumstances. For this reason, the results of the interaction between the traditional tribal cultures and the classical culture were also diverse. In this respect, even the Romano-Barbarian monarchies which the Visigoths, Franks, and Lombards established on the ruins of the Western Roman Empire differed significantly amongst themselves. Even more profound differences separated the entire territory that Walter Schlesinger calls Roman Germania from the tribes conquered, Christianized, and subjugated into statehood by the barbarian heirs to the Roman Empire – the Carolingian and Ottonian dynasties.[3] And finally, the creation of states and the processes of Christianization taking place outside the Carolingian dynasty – in Scandinavia, Poland, Bohemia, Hungary, Rus', and the southern Slavic states – were carried out on the initiative of local rulers. The scope of the Romanization or Hellenization of barbarian cultures was most limited in these cases, and the structures of the new systems differed significantly from the Western and Byzantine models.[4]

All these differences and the complex processes of interaction and cultural interchange disappear from our field of vision if we reduce the genealogy of European culture to its Mediterranean legacy. Europe also has vastly expansive barbarian roots. Failure to acknowledge these roots makes it impossible to understand both the complex history and the present-day cultural diversity of Europe.

The Greek word *bárbaros* derives from the imitation of inarticulate gibberish – *bar-bar-bar*. This is how the ancient Greeks used to mimic those whose speech they were unable to understand, and is how they called all foreign-language speaking peoples. The Romans borrowed the term from the Greeks and used it in its secondary meaning woven around the opposition between barbarity and civilization. The memory of the primary meaning of the word "barbarian" had been preserved, however, at least by the educated elites. It is this memory that Ovid evokes, when in exile in Tomis and alone among the Thracian Getae, he writes: *Barbarus hic ego sum, qui non intellegor ulli / et rident stolidi verba latina*

2 Yet, it is advanced by some. See, for example, van Engen, *The Christian Middle Ages*; for critical views, see J. C. Schmitt, *Religione, folklore*, pp. 6–17.

3 Schlesinger, "West und Ost."

4 Sücs, *Les trios Europes*; Modzelewski, "Europa romana."

Getae ("Here it is I that am a barbarian, understood by nobody; the Getae laugh stupidly at Latin words").[5]

Does this paradoxical reversal of positions indicate that the experience of exile allowed Ovid to understand the relativity of the notions of civilization and barbarity? This is what Allan A. Lund thinks.[6] What is no doubt unquestionable is that Ovid – treated by the Getae in the same way the Greeks treated all those who spoke a foreign language, and simultaneously conscious of the origin of the word "barbarian" – calls ridiculing other peoples' speech a stupidity.

The attitude towards foreign-speaking peoples which Ovid discredits had not been unusual in archaic Europe. A similar form of the word "*niemcy*" appears in all Slavonic languages. It derives from the word meaning "mute" (*niemy*) and it initially referred to people whose language was as incomprehensible to the Slavs as the inarticulate gibberish of a mute person. This is why the *Tale of Bygone Years* from the beginning of the 12th century thus described the Finno-Ugric tribes inhabiting the north-eastern borderlands of Rus': "*Jugra że ljuďe jest' jazyk něm*" ("The Ugric people are but a mute people").[7] The Slavonic concept of "mute peoples" corresponded precisely to the primary meaning of the Greek word *bárbaroi*.

These were, undoubtedly, value-laden categories, at least to the extent that in traditional societies the division into "us" and "them" was laden with particular values. Language communities (such as the Hellenic, Germanic or Slavonic ones) indeed transcended the political ramifications of the tribes and had no organizational structure. But the sense of affinity stemming from ease of communication, the cult of the same gods, and a similarity of customs made them the widest groups of identification.[8] The bond with one's native group came to be expressed in one's opposition to all aliens. This opposition did not have to be hostile, yet it was always emotionally branded.

Yet, in the case of Greeks, and even more so in the case of the Romans, the sense of a fundamental difference from peoples speaking incomprehensible languages was soon supplemented by an unshakeable conviction about their own cultural superiority. The Romans never considered the Greeks to be barbarians. Instead, they thought of themselves and the Greeks as antithetical to the barbarians. What linked both peoples, according to the Romans, was obviously not language but culture. The word "barbarian" thus acquired a new conceptual meaning. It no

5 Ovidius, *Tristia*, 5. 10, p. 37f.
6 Lund, "Zum Germanenbild," p. 15.
7 PVL, vol. I, p. 167.
8 Gieysztor, "Więź narodowa," p. 15f.; Lund, "Zum Germanenbild," p. 4f.

longer denoted people speaking a foreign language, but those living beyond the realm of civilization and therefore savage.

What changed as well was the sharpness of the divisions. The ethno-linguistic criterion excluded all aliens once and for all. The cultural criterion, on the other hand, allowed for the possibility of proximity and even inclusion by acculturation. In the eyes of the Roman writers, the distance that divided particular tribes from civilization, which they referred to as *humanitas* or *cultus*, could be various. The Ubii were, according to Julius Caesar, slightly more civilized (*paulo humaniores*) than other Germanic tribes, because they dwelt on the right bank of the Rhine and maintained contact with Roman merchants and the nearby Gauls whom they, in a sense, came to resemble.[9] It appears, then, that the Gauls were less barbarian than the Germanic tribes. However, even the Gauls were not perceived as a homogenized group. It was the Belgae whom Caesar considered most belligerent because they lived at the furthest remove from the Roman province (*horum omnium fortissimi sunt Belgae, propterea quod a cultu atque humanitate provinciae longissimae absunt*).[10]

That "province" from which the Belgae were so distant also belonged to Gaul, yet a Gaul that was already tamed and "dressed in a toga" (*Gallia togata*). From Caesar to Cassiodorus, the word *togatio* was used to describe the passage of the conquered peoples from barbarity to civilization. The Early Roman Empire clad other countries in the toga: Gaul, Spain, and Britain. The free inhabitants of a province would become Roman citizens and undergo Romanization. The elites of the Empire saw this expansion as a civilizing mission,[11] while barbarity became a name for the world outside, not yet included into the realm of the Empire and thus deprived of culture and public order.

The church of the Late Roman Empire adopted this attitude and gave it a new dimension. The civilizing mission was transformed into a Christianizing mission and became a duty of the Christian clergy and Christian rulers. The church writers of the European Middle Ages saw the pagan peoples as barbarian, at times ethnically similar or kindred to them, though not yet baptized.[12] In the eyes of the historiographer, the Venerable Bede, the continental Saxons (*antiqui Saxones*) were also barbarians since they were pagans who killed the representatives of the civilized world, that is, the Anglo-Saxon missionaries Ewald the Fair and Ewald the Black. And of course, the Venerable Bede did not fail to note that the

9 Caesar, BG, 4. 4. 3.

10 Caesar, BG, 1, 1. 2.

11 See, Dauge, *Le barbare*.

12 Jones, "The Image of the Barbarian."

continental Saxons did not have a king or the statehood immanent to civilized peoples. Adam of Bremen likewise called the pagan Swedes barbarian, whereas he considered Sweyn II Estridsson, king of Denmark, a civilized and enlightened man, "*qui omnes barbarorum gestas res in memoria tenuit*."[13]

The connotations of the term *barbari*, despite the religious undertones it acquired in the Middle Ages, remained essentially unchanged, retaining the meanings shaped in the Roman Empire. Hence, the church writers were heirs to classical culture in their stereotypes as well. Irrespective of the influence these stereotypes exerted on the ways barbarian peoples were perceived, the pagan Europe of the Middle Ages, similarly to the European *barbaricum* at the time of the late Empire, was indeed a domain of traditional, usually illiterate, communities organized politically into tribes and federations of tribes, and not into states.

The concept of the barbarians was based, however, on a negative criterion: it meant uncivilized peoples, that is, peoples remaining outside the realm of classical culture and its legacy. But didn't this negative stereotype conceal diversity? Historians have long puzzled over the question. Under the influence of the nationalist ideas of the 19th century, scholars relinquished treating the *barbaricum* in its entirety and concentrated their efforts on identifying ethnically and linguistically distinct communities. Following the linguists who would reconstruct a Proto-Slavic language, the Pan-Slavic historians endeavored to reconstruct a Proto-Slavic system of social institutions and legal norms. The system was meant to be a political reflection of the spiritual values supposedly common to all Slavic lands. In a similar vein, scholars assumed that a uniform political system based on cultural foundations once common to all Germanic peoples existed in the remote past. These ideas have been quite deservedly discarded,[14] but research on the social history of the Germanic and Slavic barbarians, as well as that of the Celts and the Balts, is still carried out along separate tracks. The power of inertia has kept us in a rut created by the work of generations of historians and has made it difficult to surmount the ethnic segregation of the research territory.

As far back as 1974, Reinhard Wenskus, a distinguished scholar of barbarian peoples, raised an objection against this segregation. In his seminal essay on the inspirations anthropology could offer medievalists, he argued that territories with similar socio-political structures did not necessarily correspond with the territories of linguistic communities. Wenskus did not consider European *barbaricum*

13 The Venerable Bede, HEGA, V, 10; Adam of Bremen, II, 43 and 62.

14 Bardach, "Historia praw"; see also Pohl, *Die Germanen*, p. 65f. and especially Graus, "Verfassungsgeschichte," p. 572 and note 146.

a uniform entity. He drew our attention to the cultural distinctiveness of the nomadic peoples of the steppe regions and of the tribes inhabiting the forest territories in the north-east of the subcontinent. Yet he treated the Celtic, Germanic, Slavic, and Baltic tribes as one cultural sphere in which the traditional communities were organized according to similar principles.[15] A call for a radical widening of the research horizons was an upshot of his views. Wenskus suggested much more than a new typology; he formulated a new research program.

This book heeds Reinhard Wenskus's call. I do not attempt, however, to completely follow his proposition. I lack appropriate competence to deal with the historical anthropology of the Baltic peoples, or the insular Celts, or even the Slavic culture of the Balkans. I have only attempted a combined approach to the sociopolitical issues of the Germanic and West Slavic tribes, at times drawing on East Slavic sources. This is no modest design. I expect harsh criticisms. I myself have not refrained from criticism of some of my precursors. I am aware of the risks involved, but I have decided to undertake this endeavor believing firmly that the necessity to surmount the ethnic segregation characterizing research on the Germanic and Slavic tribes of barbarian Europe has at last come to maturity. This entails a readiness to put sources that are remote from each other both in time and place on a common comparative agenda. Eleven centuries separate Tacitus's *Germania* from Helmold's *Chronica Slavorum*. Six centuries passed between the times when the Salic law and *Russkaya Pravda* were written. Are we allowed to read these relics comparatively?

I do not intend to discuss this issue at the beginning but throughout the course of this work. A verdict on the usefulness of sources cannot precede a thorough analysis of their contents. Unlike astronomical time, historical time does not pass identically for all communities and cultures.

The chronological distances between historical sources do not exempt the scholar from thinking about the similarities of information they contain. In this respect, a historian can learn something from an anthropologist.

Indeed, the issues discussed in this book have much in common with ethnology. Tacitus's *Germania*, which I have just mentioned, is after all, an ethnographic work. From the perspectives of ancient and medieval civilization, the barbarian tribes were seen to a certain extent as the so-called "exotic peoples" studied by ethnologists in the 19th and 20th centuries. The barbarians' political-territorial organizations, known in scholarly research as tribes, did not have any instruments of administrative coercion, and their social integration was based

15 Wenskus, "Probleme," p. 19f.

on the profound strength of tradition and the pressure the group exerted on its individual members. These were communities that functioned without any written language and within which not only mythology, but also collective historical memory and legal norms were passed orally from generation to generation. This latter characteristic poses particular methodological difficulties for the historian, and so we shall have to start with a discussion of these difficulties.

Chapter I. From Written Evidence to Illiterate Communities: Narratives on the Barbarians

To a certain extent, every historian resembles an ethnographer. A barrier of cultural difference separates the researcher from the object of the research. This is the greatest challenge and simultaneously the greatest charm of our profession; we have to move beyond that barrier and come to understand a culture that differs from ours. But, in research on the communities of barbarian Europe we encounter an additional difficulty. Besides the cultural distance between us and the tribal communities of the Germanic and Slavic peoples, there is also a cultural difference between those barbarian tribes and the authors of ancient times and the Middle Ages from whose writing we derive information on the barbarians themselves. What we are thus dealing with is a double barrier.

The traditional cultures of *barbaricum* relied on oral transmission and usually functioned without written language. Rune stones are an exception which does not challenge the rule. The inscriptions engraved on these stones served magico-cult functions, and they were not a means of communicating knowledge about legal norms or political institutions.[16] The barbarian world offered no written evidence of its own existence until it was transformed by Christian states and the Church. Written evidence about this illiterate world can be roughly divided into two categories. The first comes from eye-witnesses or second-hand accounts of those who had encountered the barbarians in ancient times or in the Middle Ages. The other includes written records of the legal traditions of particular barbarian peoples and, occasionally, of their myths and mythological-historical traditions. These were not works of foreign erudition, but rather, for the most part works of native origin. The written codification of tribal customary laws was carried out at the request of the barbarian rulers. This, however, took place only after statehood and Christianity had been adopted. The sources on tribal communities are thus either external or *ex post* evidence.

1. Literary Topoi and Reality

From Caesar's Gallic Wars to Valdemar I of Denmark's capture of Arkona in 1168, and to the subjugation of the Old Prussians and the Yotvingians by the

16 Krogmann, *Die Kultur*, pp. 77 ff.; see Düwel, *Runeninschriften*.

Teutonic Knights, the civilized world devoured ever wider stretches of Barbarian Europe. Over the course of thirteen centuries, political-military confrontations and missionary actions were accompanied by Latin and Greek writers' attempts to depict the barbarian tribes. Those who wrote about them were military commanders, such as Caesar or the author of *Strategikon*, ancient historians, such as Tacitus or Procopius of Caesarea, and the chroniclers and hagiographers of the medieval West. Despite some obvious differences among particular writers, their observations concerning the Germanic, Slavic, and Baltic tribes are strikingly similar.

This similarity has attracted scholars' critical interest. Unfortunately, their research has focused mainly on the search for topoi. The similarity of the content recurring in the various texts about the barbarian peoples would thus be explained as a migration of literary borrowings rather than as a similarity of the reality described.[17] However, we can talk about borrowings only when it is possible for the ancient or medieval authors to have been able to know the original.

The only commonly known text that was used in the entire literature of the Middle Ages was the Bible. German chroniclers and hagiographers drew from it patterns of Latin phraseology, mainly from the Vulgate and Patristics. One needs to take this fact into account especially when dealing with medieval accounts of pagan beliefs, rituals, and worship. While it is true that the phrases and expressions drawn, literally, for the occasion from the Psalms or the writings of the Church Fathers were rhetorical embellishments or an homage to literary convention, epithets such as *superstitio* (superstition) or *idolatria* (idolatry) defined the prevalent canon of valuation. This is by no means to say that the accounts of the places of worship and of the rituals performed by the pagan Lutici, Swedes, Pomeranians, Wagri, and Rani found in the texts of Thietmar of Merseburg, Adam of Bremen, Herbord, Helmold, or Saxo Grammaticus simply replicate biblical stereotype, and so do not merit belief.[18] The details these authors provide have

17 See Norden, *Germanische Urgeschichte*, pp. 56–58, 139; Bringmann, "Topoi;" and below, note 3.

18 Those inclined towards such a sceptical view include: Boudriot, *Altgermanische Religion*; Achterberg, *Interpretatio christiana*; Clemen, *Altgermanische Religionsgeschichte*; Wienecke, *Unterschungen*; and Harmening, *Superstitio*. Schmitt ("Les 'superstitions'") did not share this hypercritical view. See also Künzel, "Paganisme" and Modzelewski, "Culte et justice." Wienecke negated the evidence given by the chronicles and hagiography about the existence of pagan temples among the Slavs, yet his categorical statements were refuted by more recent archaeological research (see Słupecki, "Problem pogańskich świątyń"). Catechetical and homiletic works (see

no equivalents in the Holy Scripture, and could not, therefore, have been taken from it; they usually come from contemporary informers or from the authors' own experience.

It is not possible, either, to derive the political organization of the barbarian tribes – accounts of the assembly, the court, the absence or the weakness of the royal power, and the structure of the federations of tribes – from the biblical model. The Holy Scripture does not mention such issues at all. Tacitus, however, wrote about them in detail in his *Germania*, and it is to this pre-Christian work that the medieval narratives of the political and religious institutions of the barbarian tribes are similar. The far-reaching similarities between those narratives and *Germania* can usually be found in their content rather than their literary form. It seems that the lack of formal correspondence between them cannot be put down to chance. In the Middle Ages, *Germania* was a work that had been almost completely forgotten. The text survived, thanks to the awakening of humanistic interests in the 15th century and a curious stroke of luck.

In 1425, a certain monk from Hersfeld came to Rome to discuss his abbey. There he met a Curia dignitary, Francesco Poggio Bracciolini, who also happened to be a zealous humanist. The monk told him about some old manuscripts in the abbey. Amongst them was the Codex, written between 830 and 850 AD which included three works of Tacitus: the *Germania*, the *Agricola* and the *Dialogus*. It was not until 30 years later that Poggio's attempts to obtain the codex succeeded. In 1455, Pope Nicholas V's envoy brought the manuscript from Hersfeld to Rome. This is how *Germania* came to be rescued. The Hersfeld manuscript itself did not survive to our time, but all surviving records of *Germania* derive from copies made of it in Rome.[19] Perhaps there were other copies of this work in the Middle Ages, but no remaining trace of their existence has ever been revealed.

The weakness of the manuscript tradition is linked with the absence of *Germania* in the literary life of medieval Europe. From amongst the medieval writers, only one demonstrated knowledge of Tacitus's ethnographic work. This was Rudolf of Fulda.[20] In the introduction to his hagiographic work, *Translatio sancti Alexandri*, written after 852, he gives a comprehensive description of the Saxons

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Simoni "I testi catechistico-omilietici") seem the only genre of medieval literature in which the replication of the biblical stereotypes was indeed more prevalent than any references to the contemporary world. Because of their formative function in medieval culture, their influence on other literary genres has to be reckoned with.

19 Heubner, "Die Űberlieferung;" Joachimsen, "Tacitus."

20 Beck, *Germania*, p. 155f.

before Christianization.[21] This portrayal is, to a large extent, a compilation. Rudolf combined, with no acknowledgement of the sources, appropriately selected and modified passages from Tacitus's *Germania* and Einhard's *Life of Charles the Great*. Drawing on *Germania*, Rudolf replaced the Germans with the Saxons, changed the present tense of the original to past imperfect, simplified here and there Tacitus's elegant Latin and ancient terminology too difficult for the medieval reader, and above all, made a number of selections tailoring Tacitus's text to his own interests and ideological intentions.

The passages used in *Translatio* were taken from chapters 4, 9, and 10 of *Germania*. A passage ("They assemble, except in the case of a sudden emergency, on certain fixed days, either at new or at full moon; for this they consider the most auspicious season for the transaction of business.") was drawn from chapter 11, but because it was taken out of context, it became a generalization that had nothing in common with the dates of the assemblies. In any case, there is no information of the assemblies (*Germania*, chapters 11 and 12) in *Translatio sancti Alexandri*. Rudolf also completely omitted the 7th chapter of *Germania* which included a marvelous portrayal of the status of the tribal kings and rulers, of the role of the priests as guardians of the sacred peace in times of conflict, and of the significance of the symbols of worship taken to war from the holy groves.

Some historians of medieval literature also attribute knowledge of *Germania* to Adam of Bremen.[22] This is a misreading. Although the introduction of his *Deeds of Bishops of the Hamburg Church* does contain passages from *Germania*, Adam did not take them directly from *Tacitus*, but copied them from Rudolf of Fulda. There is no doubt about this: *Gesta hammaburgensis ecclesiae pontificum*, book I, chapters 4–7 are a verbatim copy of the compilation with which *Translatio sancti Alexandri* opens. In any event, Adam of Bremen was not aware of the fact that he was citing Tacitus, nor did he realize that he was doing so via Rudolf of Fulda. He did not know this was a compilation. He was convinced that the text he was dealing with was written by one anonymous author, and because he encountered familiar sentences from the *Life of Charles the Great* there, he attributed its authorship to Einhard. He expressed his conviction at the beginning and at the end of a lengthy quote from *Translatio*: "After briefly relating these events, Einhard enters upon his history as follows […]"; "These excerpts about the advent, the customs, and the superstitions of the Saxons […] we have taken from the writings of Einhard."[23]

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21 TSA, 1–3, pp. 674–676.

22 Stok, "La Germania," p. 138; see, Manitius, "Zu Adam," pp. 202 ff.

23 Adam of Bremen, I, 3, p. 8 and I, 8, p. 11.

We can therefore state with absolute certainty that Adam of Bremen did not know *Germania* and had no idea about those of its chapters which Rudolf of Fulda did not include in his text. We need to bear this in mind when examining the obvious similarity between the story of the martyr's death of the missionary Wolfred and the information Tacitus gives about the manners in which the Germans carried out the death penalty. In 1030, an English missionary named Wolfred went to Sweden to preach the Word of God to the pagans. "And as by his preaching he converted many to the Christian faith, he proceeded to anathematize the tribal idol named Thor which stood in the Thing of the pagans, and at the same time he seized a battle ax and broke the image to pieces" (*ydolum gentis nomine Thor stans in concilio paganorum cepit anathematisare simulque arrepta bipenni simulacrum in frusta concidit*). In the eyes of the Swedes, this was obviously a monstrous sacrilege for which they, therefore, meted out a punishment fitting the crime: "And forthwith he was pierced with a thousand wounds for such daring, and his soul passed into heaven, earning a martyr's laurels. His body was mangled by the barbarians, and, after being subjected to much mockery, was plunged into a swamp" (*corpus eius barbari laniatum post multa ludibria merserunt in paludem*).[24]

We can indeed be compelled to compare this story with the 12th chapter of *Germania*. We can read there that crimes punishable by death were tried at the assemblies and the manner in which punishment was carried out depended upon the type of crime (*distinctio poenarum ex delicto*): "traitors and deserters they hang from trees, but the cowardly and the unwarlike and those who disgrace their bodies they submerge in the mud of the marsh, with a wicker frame thrown over" (*ignavos et imbelles et corpore infames caeno ac palude, iniecta insuper crate, mergunt*). Tacitus derives the difference in the forms of execution from an opinion ascribed to the Germans that "villains should be punished in the open as examples, while shameful deeds should be hidden away" (*scelera ostendi oporteat, dum puniuntur, flagitia abscondi*).[25]

With its promise of a simple explanation of coincidences, the hypothesis of a literary topos traced from Tacitus to the canon of Bremen may indeed seem tempting, yet it is essentially wrong. The information on the drowning of convicts in swamps comes from chapter 12 of *Germania*, but this chapter was completely omitted by Rudolf of Fulda and thus unknown to Adam of Bremen. The news that "the barbarians […] plunged into a swamp" the body of the missionary who had

24 Adam of Bremen, II, 62, pp. 97–98.

25 Tacitus, *Germania*, chapter 12, p. 32.

violated pagan sanctity is completely unrelated to the observation made almost a thousand years earlier by the Roman historian. Neither Adam of Bremen nor even Tacitus understood the meaning of what they described, but their descriptions find a credible confirmation and partial explanation in other sources.

Title XXXIV of the Burgundian customary law of the early 6th century includes the following prescription: "If any woman leaves [puts aside] her husband to whom she is legally married, let her be smothered in mire" (*necetur in luto*).[26] The credibility of this information is indisputable. We are dealing here with a norm of traditional law that cannot be treated as a literary reminiscence. For a husband to be abandoned by his wife was, in the eyes of the Burgundians, a particularly maleficent and shocking deed because it violated the sacred norms on which the patriarchal social order was based. What this norm addressed was a sexual taboo which corresponds perfectly to the information Tacitus gives about plunging into swamps those people who were stained with carnal impurity (*corpore infames*). It is easy to understand that the gruesome circumstances of such a death attracted the attention of the Roman historian, but the editors of the legal codes were guided by other criteria. When they wrote about the penalty of death, they did so without specifying how it was to be carried out. The precise instructions included in title XXXIV of the Burgundian law show that the place and manner of executing an unfaithful wife had a fundamental ritual significance that was likely an inheritance from pagan cult.

We can find a direct reference to this at the end of the *Additions of the Wise Men*, a text written when the customary law of the Frisians was being codified around 802: "If anyone breaks into a shrine and steals sacred items from there, he shall be taken to the sea, and on the sand, which will be covered by the flood, his ears will be cleft, and he will be castrated and sacrificed to the god, whose temple he dishonored" (*Qui fanum effregerit et ibi aliquid de sacris tulerit, ducitur ad mare, et in sabulo, quod accessus maris operire solet, finduntur aures eius, et castratur et immolatur diis, quorum templa violavit*).[27]

The reasons why this evidently pagan norm was noted by Christian codifiers will be examined in the next chapter. What is striking here is the correspondence between this legal prescription and the information given by Adam of Bremen about the martyred Wolfred. Both cases speak of a similar crime: the violation of a pagan sanctuary. Punishment, too, was meted out in a similar way. The drastic details recorded in the Frisian *Additions of the Wise Men* allow us to imagine

26 LC, title XXXIV, p. 45.

27 LFris, *Additio sapientum*, XI.

the magnitude of the physical abuse, those *multa ludibria*, the Swedes inflicted on the missionary's body before they plunged him into the mire. Although the Frisians did not stage the finale in a marsh, but on littoral sand, they nonetheless specified that the particular site be washed by tidal waters where the ground was wet and boggy. It is there that the body of the man who committed this sacrilege, stripped of his ears and manhood, was sacrificed to the dishonored gods.

In the mythology of the Indo-European peoples, marshes, swamps, and wetlands were seen to be the realm of the gods of the underworld, spirits of the dead and of vegetation. Sources that depict the sites at which criminals who had violated the sacred principles of the community were executed (in particular, the description of their torture and execution in *Additio sapientum*) provide unanimous testimony that allows one to argue that such criminals were offered as sacrifice to chthonic gods.[28]

Thanks to the excellent preservation of organic remains in marshlands and bogs, we are nowadays able to stand face to face with some of those humans sacrificed to the gods. As a result of peat harvesting and, later on, of archaeological research, several hundred so-called "bog bodies" have been discovered in northern Germany, Denmark, Holland, and Ireland. We obviously cannot see all of them as the remains of victims of treacherous murders or unfortunate accidents.

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28 It was not only criminals who were offered as sacrifice. Adam of Bremen (IV, 26, scholia 138) mentions a spring near a temple in Uppsala "at which the pagans are accustomed to make their sacrifices, and into it to plunge a live man. And if he is not found, the people's wish will be granted" (*Qui dum non invenitur, ratum erit votum populi*). The sacrifice was simultaneously an oracle. There was a sacred grove adjoining the temple where people and animals meant for sacrifice were hanged on the trees (Adam of Bremen, IV, 27). People sacrificed to the chthonic god were plunged in the sacred spring (since it sucked people down, the spring may have been marshy). The animal and human sacrifices hung on the trees in the grove were no doubt meant for Odin. These two kinds of deaths correspond to the two kinds of death penalties that Tacitus wrote about in the 12th chapter of *Germania*. We can already find such a reading of the information provided by Tacitus in Heinrich Brunner (*Deutsche Rechtsgeschichte*, I, p. 245f. and 477). In *Todesstrafen*, von Amira has extensively proven the thesis about the sacred character of the death penalty in Germanic tribes. Both Rechfeldt (*Todesstrafen*, p. 76f.) and von See (*Kontinuitatstheorie*, p. 31) – the latter sceptical towards *sacrum* – interpreted the plunging into the mire differently. They read it as a magical counteraction against the evil powers of the criminal. De Vries (*Religionsgeschichte*, I, p. 413f.) upheld and convincingly substantiated the interpretation of death penalty as human sacrifice, directing his attention to the inextricable connection between tribal law and pagan cult.

Some of these bodies, found within a relatively limited space, were located in places that archaeologists interpret as sacrificial. The majority of these bodies belong to horses, oxen, rams, and ewes, yet alongside these, there are also human bodies, some of them blindfolded or with visible marks of torture inflicted before death.[29]

The ritual killing of criminals described in *Germania* was apparently practiced extensively in Europe over many centuries. The Burgundians carried it out at the beginning of the 6th century, the Frisians at the beginning of the 8th, and the pagan Swedes still followed this practice as late as 1030. Adam of Bremen wrote about it almost a thousand years after Tacitus – and it was still true. Such ritual killing is not the only custom or practice mentioned by Tacitus in *Germania* that was observed centuries later. His reference to how assembly decisions were taken by a special kind acclamation (expressed by the shaking of spears) finds confirmation in the 12th century records of Norwegian customary laws where this ritual is referred to as *vapnaták*.[30] In this case, we are dealing with the law and not literature, and one cannot explain this coincidence as a result of a traveling topos. It seems that the disbelief scholars express at the unmistakable similarities between the contents of *Germania* and the medieval narratives about barbarians reflects a characteristically Western attitude towards time and social change. This attitude does not, however, advance our understanding of traditional cultures, and it does not authorize a historian to discredit the evidence given by historical sources.

Moreover, similarities between Tacitus and the medieval narrators can be found in narratives concerning both the Germanic and the Slavic tribes. The information Thietmar of Merseburg provides about the standards (*vexilla*) with images of pagan deities that the Lutici bore when they went to war, and that were stored in the temple of Svarog in Riedegost, or about the priests who would accompany them at times of war, have an obvious analogy in the 7th chapter of *Germania*.[31] Yet Thietmar draws this information not from Tacitus, but from eyewitnesses who, arm in arm with the Lutici, took part in Henry II's campaign against Bolesław I the Brave. Thietmar's detailed description of the Lutici oracles – lot-casting and

29 Jankuhn, "Tier- und Menschenopfer" and *Opfersitten*.

30 Tacitus, *Germania*, chapter 11: *Si displicuit sententia, fremitu aspernantur; sin placuit, frameas concutiunt; honoratissimum assensus genus est armis laudare.* See also, Frost., V, 46, XII, 2 and 2 and XIV, 4. The same procedure is also mentioned in the *Laws of Edward the Confessor* (*waepnatak*) and it was, according to Brunner (*Deutsche Rechtsgeschichte*, vol. I, p. 210), brought to England by the Scandinavian newcomers.

31 Thietmar, VI, 22 and 23 and VII, 64; Tacitus, *Germania*, chapter 7, p. 26.

horse-divination – is very similar to, though not identical with, the 10th chapter of *Germania*. Thietmar's account corresponds with the description of Pomeranian oracles in Otto of Bamberg's hagiology, with the description of the oracle of Rügen Island in Saxo Grammaticus's *Gesta Danorum*, and that of horse-divination among the Livs in the *Livonian Chronicle of Henry*.[32]

Similarities can also be found in manifold accounts of the functions of tribal assemblies. Essentially the same image of the assembly and its role in the political order of tribal communities recurs in the representations of the Germanic tribes in Tacitus, the Sclaveni and the Antes in Procopius of Caesarea, the pagan Saxons in the *Vitae of Lebuinus*, the Swedes in Rimbert and in Adam of Bremen, the Lutici in Thietmar, the Pomeranian Pirissani in Herbord, and the Wagri in Helmold's *Chronicle of the Slavs*. This recurrence has nothing to do with a series of literary borrowings, but with independent records of similar observations, at times first hand (as in Helmold), and at others taken directly from well-informed witnesses (as in Thietmar or in the earlier *Vitae of Lebuinus*).

Is, therefore, this similarity of narratives evidence of a socio-political homogeneity of the barbarian tribes and the longevity of their traditional order of things? To conclude so would be too easy and too convenient. The similarity of evidence can stem not only from the similarity of the reality described, but also from similar ways of seeing it. Such similarities in perception can arise from a shared point of view. Whenever the political institutions of the barbarian tribes are at stake, the reasoning employed by Tacitus, Procopius of Caesarea, Bede, St. Lebuinus's hagiographer, Rimbert, Thietmar, or Adam of Bremen would always follow the same path. To discover that these tribes had no royal power, or that this power was feeble, marked the beginning of the path. What followed the discovery was the question: How did the barbarians handle decision making and implementation? In their search for the answer, the narrators were ready to see the assemblies as a kind of remedy to the lack of civilized statehood.[33]

This pattern of thought can aptly illustrate an essential affinity of perspective in our sources. There is no doubt that the bishop of Merseburg draws his information about the Lutici from contemporary and well-informed witnesses, that is, "from life" and not from the texts of ancient authors. Thietmar did not know *Germania*, and most probably knew nothing about Tacitus. But Thietmar was a son of the church and thus a grandchild of Rome. What he had in common with

32 Tacitus, *Germania*, chapter 10, pp. 29–31; Herbord, II, 32 and 33, p. 125; VP, II, 11, p. 42 n.; Saxo Grammaticus, *Gesta Danorum*, XIV, 39, pp. 465 ff.; HLiv, I, 10, p. 6.

33 Tacitus, *Germania*, chapters 7 and 11; Procop, *Bella*, VII, 14; Thietmar, VI, 25; Adam of Bremen, IV, 22.

the Roman historian, whose work he had never read, was the matrix of cultural legacy. The intellectual apparatus of the church writers of the medieval West, though in many ways rather meager in comparison to its ancient predecessors, derived, nevertheless, from classical culture. Both ancient and medieval intellectuals saw the barbarian world through the prism of the same patterns of thought. This is why the same phenomena found in the political system of the barbarian societies seemed strange, noteworthy, or exotic to them. These phenomena held a place in the foreground, and that made the composition of the entire picture similar to others. This is not a reason to deprive the narrators cited here of their credibility, but it certainly is an important issue that a critical interpretation of sources needs to face.

2. Cross-Cultural Communication as a Source Studies Problem. In Praise of Barbarian Hospitality and Decorum

In source criticism, literary borrowings cause little trouble because they are easy to recognize. We know that when characterizing the political system of the Saxon tribes, St. Lebuinus's hagiographer made use of an expression borrowed from Bede. We know that Adam of Bremen relied on Rimbert, while Helmold drew heavily from Adam of Bremen. To estimate the influence of literary models on the credibility of disparate sources, and particularly the information the sources contain, requires an individualized assessment. What cannot be done in this way, though, is finding a common denominator in the ancient and medieval narratives about the barbarians. The fact that the authors of such narratives often relied on the work of their predecessors does not mean that a system of literary borrowings united all of them into a seamless whole. What did unite them was a shared anthropological situation: each of these sources was a result of communication between two different cultures.

It was a communication inevitably marred by misunderstanding. Each of the two cultures understood the other in its own way, but only one of them knew how to write, and it is only that culture's written records that we have at our disposal. In order to access the illiterate side using these records, we need to recognize the cultural barriers which prevented the civilized peoples of those days from understanding the barbarians and hampered communication between them. It is only then that we will be able to untie the knot of misunderstandings.[34] This may not always or entirely be feasible, but this is where the major problem of the critique of historical sources lies. It is worthwhile to illustrate the general formulation of

34 See, Modzelewski, "Culte et justice," pp. 619 ff.

a methodological problem with a specific example. Let us look, then, by way of example, at the opinions the ancient and medieval writers held about the hospitality the barbarian peoples extended to foreigners.

According to Caesar, "To injure guests, they [the Germans] regard as impious; they defend from wrong [*iniuria*] those who have come to them for any purpose whatever, and esteem them inviolable [literally: sacred – *sanctos habent*]; to them the houses of all are open and maintenance is freely supplied."[35] Tacitus wrote along similar lines about the Germans: "No other race indulges more lavishly in feasts and entertaining. They think it impious to turn from the door any person at all, and everyone entertains with the best banquet his means will allow. When these fail, the man who just now was host becomes a guide to hospitality and a comrade: they approach the next house without invitation. Nor does it matter for they meet with an equally civil reception; as far as the rights of the guest are concerned, they do not distinguish those they know from strangers. It is a custom to grant to a guest as he leaves whatever he wants, and they have a like ease in making requests in return. They delight in presents, but do not count what they give as debts nor feel bound by what they receive."[36]

There is no doubt that Tacitus drew on Caesar here. This is not a simple borrowing, though. Tacitus makes reference to the theme of mutual gifts, which is absent in Caesar. From the point of view of ethnology, the pertinence of this observation does not come into question.[37] In this case, Tacitus most probably relied on the experiences of Roman merchants and travelers. It is also from them that he may have taken the information about the guest's moving from one house to another. It makes Caesar's reference to the hospitality offered by all houses more concrete, and it corresponds to the inviolability of the guest we find in *Commentaries on the Gallic Wars*.

Both motifs – care about the guests' safety and taking them from house to house – can be found in Maurice's *Strategikon*. Yet this time it is about the Sclaveni and the Antes, Slavic peoples who neighbored the Byzantine Empire at the turn of the 6th and 7th centuries. We learn that "they are kind and hospitable to travelers in their country and conduct them safely from one place to another, wherever they wish. If the stranger should suffer some harm because of his host's negligence, the one who first commended him will wage war against that host, regarding vengeance for the stranger as a sacred duty."[38]

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35 Caesar, *Commentarii de bello Galico*, VI, 23, p. 191.

36 Tacitus, *Germania*, chapter 21.

37 Mauss, *Socjologia*, pp. 211–302; Gurewicz, *Kategorie*, pp. 227–242.

38 Maurikios, *Strategikon*, XI, 4, 3–4.

The author of *Strategikon* probably knew Latin, but it is uncertain if he ever read *Commentaries on the Gallic Wars* or *Germania*. Besides, it is not of great importance. *Strategikon* was a manual of war tactics, and it contained information potentially useful to the Byzantine commanders, rather than literary reminiscences. The Empire was constantly threatened with attacks from the Slavs, so it launched crusades against them. For this reason, it was important to gather all information of intelligence value about them. Various travelers, in particular merchants wandering across Slavic territories, became perforce the Empire's informers. The way in which the Slavs treated foreign guests was something these informers experienced first-hand, and something that the Byzantine military men, who relied on these informers, also found to be important. This is why the Slavs' hospitality came to be described in *Strategikon*. The description speaks of knowledge based on reports, and its analogy to those of Caesar and Tacitus stems solely from its similarity to the described reality and a shared way of perceiving it. However, the author of *Strategikon* noted an important circumstance which escaped the attention of both Caesar and Tacitus: those who deviated from the norm of hospitality and failed to ensure safety for the guest for whom they were supposed to provide care, invited blood feud from their fellow tribe members. According to Maurice, it was to be an individual feud. The previous host to the neglected guest was to act as the avenger.

Helmold's *Chronicle of the Slavs* renders the revenge for violating the rights of the guest differently. Helmold did not know Greek, nor was he aware of *Strategikon*. He had read neither Caesar nor Tacitus,[39] yet he knew the north-western Slavs, the Wagri in particular, rather well. He spent nearly ten years among them doing the work of ministry. He went there for the first time in 1156, accompanying Bishop Gerold en route to this still pagan land of the Wagri. Pribislav, the prince of this tribe, held a feast for him and his companions at his residence. "Twenty dishes of food leaded the table set before us," Helmold notes. "There I learned from experience what before I knew by report, that no people is more distinguished in its regard for hospitality than the Slavs. For in respect of the entertainment of guests they are all, as if of one mind, eager that it be not necessary for any one to ask for hospitality […]. But if anyone […] is caught denying a stranger hospitality, it is lawful to burn his house and property [*huius domum et facultates incendio consumere licitum est*]. They all likewise, vow and declare

39 Helmold knew, via Adam of Bremen, the first chapters of *Translatio sancti Alexandri* in which Rudolf of Fulda used passages from *Germania*, but Rudolf's compilation did not include chapter 21 of *Germania* that contained information about the treatment of guests.

that he who does not fear to deny a stranger bread is shameful, vile, and to be abominated by all [or "exiled" – *ab omnibus exsibilandum*, or, according to another edition, *ab omnibus exiliandum est*]."[40]

It is possible that Helmold did not quite realize the significance of what he had written. For a community to turn against an individual who had violated the rule of hospitality was something much more severe than moral condemnation. Burning the house was one of the harshest punishments that the tribal communities meted out. Home signified one's place within the community and was an inviolable refuge. Even a murderer subject to customary revenge could not be killed in his abode.[41] Disgrace, unanimously declared, and the legal burning down of one's house and one's property equaled being placed on the margin of the community, deprived of all rights and sent into exile.

The evidence Helmold gives can be fruitfully compared with Bede's story of two Anglo-Saxon missionaries, Ewald the Black and Ewald the Fair, who at the end of the 7th century died a martyr's death in the land of the "old," that is, overseas, continental Saxony. After arriving in Saxony, these missionaries "went into the guesthouse of a certain reeve, asking him to give them safe conduct to the viceroy who was over him because they had a message of importance which they had to deliver to him. The Old Saxons have no king but only a number of viceroys who are set over the people and, when at any time war is about to break out, they cast lots impartially and all follow and obey the one on whom the lots falls, for the duration of the war. When the war is over, they all become *satrape* of equal ranks again. So the reeve received them and though he promised to send them to the *satrapae* who was over him, as they requested, yet he kept them several days."

But Ewald the Black and Ewald the Fair said mass every day. It alarmed "the barbarians," who realized that the missionaries were "of a different religion" and, fearing they would convert the ealdorman and Christianize the country, killed the missionaries and threw their bodies into the Rhine. "When the viceroy whom they wished to see heard of it, he was extremely angry that the pilgrims had not been permitted to see him as they wished. So he sent and slew all those villagers and burned their village" (*et mittens occidit uicanos illos omnes, uicumque incendio consumsit*).[42]

Bede does not give the year in which this incident took place, but he wrote down the day on which the missionaries were killed – the third of October. This

40 Helmold, I, 83, p. 158f.

41 LFris, *Additio sapientum* I, p. 80; LSax, XXVII, p. 25.

42 Bede, HEGA, V, 10, p. 458.

testifies to the cult of martyrs that was developing in Cologne. Bede's tale of their mission and death is based, therefore, on the hagiographic tradition, the groundwork of which seems – despite the nearly 30 years that had passed since the events described took place – roughly credible. This does not mean that the Anglo-Saxon scholar had sufficient knowledge about the exotic land of the "Old Saxons" to understand properly all aspects of their reality.

Let us note that Ewald the Black and Ewald the Fair were provided with hospitality immediately upon arrival (*uenientes in prouinciam intrauerunt hospitium cuiusdam uillici*). This act of hospitality meant that the host was obliged to escort the guests to the place they wanted to visit next. This corresponds to the norm of behaving towards foreigners that we know from Tacitus's accounts about the Germanic tribes, Maurice's accounts about the southern Slavs, and Adam of Bremen's accounts about the Swedes.[43] The killing of the missionaries obviously constituted a drastic violation of this norm. Since the bodies were thrown into the river, it was not an ordinary killing but a much graver crime –assassination – referred to by the Germans as murder (*mordrid, mordtotum*). The perpetrator of such a deed was, according to the customary law of the Saxons, either to pay the victim's ninefold wergild (the price for one's head) or to die at the hands of the avengers.[44]

The motif of punishment inflicted upon the killers of saints appears, more often than not, in hagiographic works, but there is no need to question the fact that the killers of Ewald the Black and Ewald the Fair paid for their deed with their own heads. What deserves belief is, above all, the information that the houses of those responsible for the death of the foreigners were burnt down. The similarity of this information with Helmold's story about the Wagri seems significant. Comparing these two sources allows us to see the burning of the houses as an essential part of the punishment for a drastic violation of the duties of hospitality – or, putting it more broadly – for insulting one's native community and breaking the most fundamental principles of its functioning.

Bede knew that the Saxons did not have a king, but it seems unlikely he fully understood the mechanisms of tribal community. Because the killers of Ewald the Black and Ewald the Fair were severely punished, there had to be – or so Bede thought – some punishing authority exercising its power. It was the *satrapa*, represented as an autocratic king in miniature, who came to embody this authority in the narrative about the martyrdom of the Ewalds. He "got very angry," decided

43 Adam of Bremen, IV, 21.

44 LSax, XIX, p. 23.

himself to punish the culprits, and carried out his decision with the help of some of his emissaries.[45]

Bede took the term *satrapae* from the Bible, most probably from *The Book of Daniel* 6, 1–2: "It pleased Darius to appoint 120 satraps to rule throughout the kingdom, with three administrators over them, one of whom was Daniel" (*placuit Dario et constituit super regnum satrapas CXX, ut essent in toto regno suo, et super eos principes tres, ex quibus Daniel unus erat*). Bede's borrowing of the term indicates that what he meant by it were the governors of many territorial units. This is the meaning the author of the *Vita Lebuini Antiqua* gave to the term he borrowed from Bede: "the old [i.e., the continental] Saxons had no king but appointed *satrape* over each district" (*Regem antiqui Saxones non habebant, sed per pagos satrapas constitutos*). The hagiographer also added information about the assembly of the federation of tribes at Marklo on the Weser where all the *satrapae* gathered, each heading the representation of his *pagus*.[46] The term *pagus* was not a general one. It was a Latin synonym of the Saxon word *go*. The annals of the 6th century and other sources related to the Carolingian conquest of Saxony would usually use the word *pagus* to refer to the smallest territorial units. Fortunately, we know about the judiciary system implemented within these territories and about the kinds of punishment administered there from sources more credible than the Venerable Bede's *The Ecclesiastical History of the English People*.

In 797, Charles the Great issued the second capitulary for the conquered lands of Saxony. The promulgation informs us that when the act was being announced in Aachen, the competent Saxons were present. Present in Aachen, as the editor of the capitulary emphasized, were the representatives of the three Saxon tribes annexed to the Kingdom of the Franks: the Westphalians, the Angrivarii, and the Ostphalians (*simulque congregatis Saxonibus de diversis pagis tam de Westfalais et Angariis quam et de Ostfalais*).[47] In the fourth chapter of the capitulary, Charles the Great agreed that, in accordance with old custom, the inhabitants of a *pagus* themselves (*ipsi pagenses*), also interchangeably called "neighbors" or co-neighbors (*vicinantes, vicini, convicini*), would be in charge of the local judiciary. They passed the verdict (*wargida*) and exacted obedience to it. The terminology used in this source indicates that the term *pagus* referred to a territorial community of neighbors.

45 Thus has Becher been taken in, "Non enim habent," p. 11.

46 VLA, chapter 4, p. 793; see also chapter 3, p. 792 (*pagus Sudergo*).

47 CS, p. 45.

The 8th chapter of the capitulary of 797 reveals how this community passed judgement and enforced it. Charles the Great agreed to subject to repression any rebel (*rebellis*) who refused either to accept the verdict passed by his neighbors or to heed the king's call to appear before his court in accordance with the ancient law of the Saxon tribes (*secundum eorum ewa*). The inhabitants of the *pagus* were to gather at the assembly and make a unanimous decision, on the basis of which they would subsequently set fire to the house of the culprit (*condicto commune placito simul ipsi pagenses veniant et si unanimiter consenserint pro districtione illius causa incendatur*).[48] At the beginning of the 11th century, the West Slavic Lutici punished their fellow tribesmen who openly sabotaged the implementation of unanimously made decisions in a similar way: the culprit was to "lose everything through burning and continuous plunder" unless compensation was paid with the value of his own wergild.[49] In both cases, the imposition of punishment and its execution lay literally in the hands of the community and not in those of any ruler, big or "small," and his bravos.

In the capitulary of 797 and in Thietmar's account about the Lutici, the rebel's crime was the ostentatious disobedience of the decisions of the assembly. Such disobedience was treated as an attack upon the most fundamental rules of public life and as an insult to the native community, an act that unanimously turned them against the culprit. Helmold's and Bede's accounts also indicate that the same kind of punishment was inflicted on people violating the rules of hospitality – the foreigners' inviolability and the necessity to ensure their safety. The guest remained under the care of the tribal community, for whom the guest was not only a kind of link to the surrounding world but also an embodiment of a certain *sacrum*. To violate the peace that protected the stranger was to insult the community. The community thus took revenge on the culprit as it did on the rebel who insulted it by ostentatiously disobeying the verdicts of the judiciary and the political decisions of the assembly. It seems, therefore, that the concern about guests and their safety was dictated not so much by a spontaneous friendliness and a sudden impulse of goodwill but by the harsh norms of traditional law.

The obligatory character of the rule of hospitality is confirmed by the Burgundian *Liber Constitutionum* from the beginning of the 6th century. According to title XXXVIII, "Whoever refuses his roof or hearth to a guest on arrival, let him be fined three solidi for the neglect" (*quiccumque hospiti venienti tectum aut focum negaverit, trium solidorum inlatione multetur*). "Members of the royal court," that

48 CS, chapters 4 and 8, pp. 46, 47f.

49 Thietmar, VI, 25. See also below, chapter VII, 2.

is, the retinue and the officials were treated differently; the punishment for refusing to offer hospitality to them was twice as severe (*si conviva regis est, VI solidos multae nomine solvat*). There was a separate regulation for foreign envoys that even defined the nature of due provisions: one pig or one ram at each stopover, and, additionally, hay and barley in winter, if necessary. Neighbors were to recompense the owner of the animal for the loss incurred, while, if service was not rendered to the envoys, a penalty of 6 solidi was imposed.[50]

As can be seen, royal power was quick to appropriate the tribal community's prerogative to exact the common duty of hospitality and deployed this prerogative to satisfy its own needs. Such is, most probably, the origin of public dues, which, in different countries, were known by different names: *gistum*, *gościtwa*, *stan*, *nocleh*, etc. But the obligation to provide each guest with hospitality by inviting them home and offering a place at the hearth was not an obligation on behalf of the monarchy. It was an old norm of the tribal law. The mild punishment for failing to conform (3 solidi) suggests that Helmold may have exaggerated when he wrote that it was acceptable to burn the house and property of he who did "not fear to deny a stranger bread" (*qui hospiti panem negare non timuisset*). The burning of the house and exile were probably meted out for much graver crimes that violated the peace of hospitality. But Helmold's words just cited, when placed alongside the account of a similar norm in the Burgundian law (*quicumque hospiti venienti tectum aut focum negaverit*), indicate that to extend hospitality to a stranger was not simply motivated by one's goodwill, and that refusal to extend it was subject to punishment.

We can formulate such an interpretation by comparing the nuggets of information scattered across a variety of narrative sources, from Caesar to Helmold, with the norms found in the *Capitulary for Saxony* and the Burgundian law. None of the ancient or medieval narrators ever made such interpretation. The relatively well-informed Helmold nearly captured the essence of the norm of hospitality, but he paused half-way. He knew how dire the consequences were for those violating the rules of hospitality. At the same time, however, he knew that what underlay these rules was not an administrative coercion but the unanimous hostility of "all" of the entire community turning against an individual. He did not represent what he described in terms of punishment, but in terms of widespread indignation and moral repulsion. Punitive repression without administrative instruments, that is, punishment imposed and carried out directly by the community, was something beyond Helmold's comprehension.

50 LC, XXXVIII, 1–5.

It was also beyond the comprehension of the Byzantine author of *Strategikon*. While it is true that he knew that a Slav who failed to ensure the guest's safety risked vengeance, he could only imagine an individual, rather than the whole community, in the role of the avenger: the former host to the wronged stranger.

Bede knew even less. He had never been to the land of the "old Saxons." Nor did he have any knowledge from intelligence reports. He had only heard that the "old Saxons" had no king, and that they were ruled by local governors from among whom they chose by drawing lots a leader in times of war. It is into this meager general knowledge that he inserted the information (drawn from the hagiographic tradition) about the martyr's death of the two Anglo-Saxon missionaries and about the fate of their killers. Unlike Helmold, Bede concluded that the killing of the murderers and the burning of houses were punishment for the committed crime, but, like Helmold, it was beyond his comprehension to see the punishment as meted out by the entire community and not by a ruler or an official wielding some administrative authority. He therefore assumed that the decision about the punishment was taken by the "satrap," supposedly angry with the villagers for not allowing the missionaries to see him. He consequently charged his bravos with meting out the punishment, sending them to the village and ordering them to kill the culprits and burn the place.

Other authors strayed even further than this from understanding the obligatory nature of the barbarian rules of hospitality. They knew nothing of the kinds of punishment that enforced compliance with those rules, and they had no idea of the collective character of punitive repression. Ancient and medieval writers usually represented the hospitality of the barbarian peoples as a natural virtue – one of the elements of the stereotype of the "noble savage." This stereotype, very visible already in Tacitus's *Germania*, was also known to Helmold, who wrote of the Rani that, in spite of clinging to paganism, "they are distinguished by many natural gifts" (*pollebant multis naturalibus bonis*): hospitality, deference to parents and care for the elderly. Along similar lines, Adam of Bremen wrote of the Wilzi: "In fact, all its inhabitants still blunder about in pagan rites. Otherwise, so far as morals and hospitality are concerned, a more honorable or kindlier folk cannot be found."[51]

Twice more does Adam of Bremen bring up this characteristic of the barbarian peoples, bringing to fore the contrast between their paganism and the innate goodness of their customs in an even more elaborate fashion and with a clearly articulated moral. The Prussians, we learn, are "a most humane people," (*hominess*

51 Helmold, II, 108, p. 214; Adam of Bremen, II, 22, p. 67.

humanissimi) who hasten to help the crew of a ship that is sinking or attacked by pirates. The word "hospitality" is not used here, but concern about the safety of strangers is no doubt emphasized. Moreover, the Prussians "[g]old and silver […] hold in very slight esteem. They have an abundance of strange furs, the odor of which has inoculated our world with the deadly poison of pride. But these furs they regard, indeed, as dung, to our shame, I believe, for right or wrong we hanker after a martenskin robe as much as for supreme happiness. […] Many praiseworthy things could be said about these peoples with respect to their morals, if only they had the faith of Christ whose missionaries they cruelly persecute. At their hands Adalbert, the illustrious bishop of the Bohemians, was crowned with martyrdom."[52]

In a similar way Adam of Bremen characterizes the pagan Swedes:

> Thus you may say that the Swedes are lacking in none of the riches, except the pride that we love or rather adore. For they regard as nothing every means of vainglory; that is, gold, silver, stately chargers, beaver and marten pelts, which makes us lose our minds admiring them. Although all the Hyperboreans are noted for their hospitality, our Swedes are so in particular. To deny wayfarers entertainment is to them the basest of all shameful deeds, so much so that there is strife and contention among them over who is worthy to receive a guest. They show him every courtesy for as many days as he wishes to stay, vying with one another to take him to their friends in their several houses. These good traits they have in their customs. But they also cherish with great affection preachers of the truth, if they are chaste and prudent and capable, so much so that they do not deny bishops attendance at the common assembly of the people that they call the *Warh*. There they often hear, not unwillingly, about Christ and the Christian religion. And perhaps they might readily be persuaded of our faith by preaching but for bad teachers who, in seeking "their own; not the things that are Jesus Christ's," give scandal to those whom they could save.[53]

When it comes to hospitality, Adam of Bremen had reliable information at his disposal. He derived it not only from merchants but, above all, from missionaries. The Hamburg Archbishopric treated the pagan peoples of the Baltic Sea basin, Scandinavia in particular, as its own zone of missionary influence. Adam of Bremen was a mouthpiece for these ambitions, and his biting words about "bad teachers" described most probably the missionary rivals to his home metropolis. All in all, he knew the experiences of the "preachers of the truth," and he also knew of the norm prescribing hospitality towards wayfarers, though, like other authors, he did not understand that it was a norm of the law. Adam of Bremen thought that the

52 Adam of Bremen, IV, 18, p. 199.

53 Adam of Bremen, IV, 21, p. 203.

Swedes treated the refusal to extend hospitality as a disgraceful deed, while it was in barbarian communities an unlawful and forbidden act. He knew as well of the custom according to which the host was to take the guest to new lodgings, but he did not see it as a norm securing the stranger's safety. Yet, above all, the account of the Swedes' hospitality was linked here with the much less credible assurance of the contempt the Swedes supposedly held for gold, silver, and other riches, and it was inscribed within a morality play explicitly addressed to the Christian culture of the West.

When it comes to idealizing the barbarians, Adam of Bremen and other medieval Christian writers had an eminent precursor in pagan antiquity, namely, Tacitus. In the 5th chapter of *Germania*, he writes: "Silver and gold the gods have denied, whether in kindness or anger I cannot say. But all the same I would not swear that no vein of Germania produces gold or silver for who has made the search? Owning and using these metals does not much impress them: among them one can see silver vases, given as presents to their envoys and leaders, held in as low esteem as those shaped from clay."

From the perspective of imperial Rome, the degree of social inequality among the Germanic peoples appeared modest, and a plain grayness may have seemed a dominant motif of their lifestyle. Tacitus, however, says a bit more. In his view, the penchant for luxury was unknown to the Germanic elites. The rich furnishings of the Germanic ducal graves belie this view.[54] In the beyond, as well as on earth, gold and silver testified to the high rank of the tribal leaders. In this case, Tacitus deviates from truth. So does Adam of Bremen. Yet Adam of Bremen, as we already know, did not know *Germania*. He knew only what was included in Rudolf of Fulda's compilation. The 5th chapter of *Germania* was omitted in this compilation and could not have been a source of inspiration for Adam of Bremen. It is likewise impossible to name any other literary prototype. The concurrence of true information in unrelated sources could be explained with accuracy of observation. When it does not ensue from literary contamination, the concurrence of misguided belief presents us with a more complex problem and resists easy explanation.

We can detect a tacit moral in Tacitus's words about the disregard for silver and gold among Germanic tribes. Further on, characterizing the marital customs of the Germanic peoples, Tacitus no longer hides his moralistic intentions:

54 Much, *Die Germania*, p. 80f.; Jankuhn, "Archäologische Bemerkungen," p. 414f.; Lund, "Zum Germanenbegriff," p. 69; Luiselli, *Storia culturale*, p. 281f.

> And yet marriage there is a serious matter: no other part of their culture could one praise more. […]. The wife does not deliver a dower to the husband but rather the husband to the wife. Parents and kinsmen take part, and approve the gifts, not gifts intended for feminine luxury or used to adorn a new bride, but cattle, a horse with its bridle, and a shield, *framea*, and a sword. Against gifts such as these a wife is acquired, and in turn she herself brings the man a weapon.

Tacitus confusedly used the term "dower" (*dos*) to refer to three different types of payment: *metfio*, a settled price, which the bridegroom had to pay to the father or other guardian of the bride for gaining male custody over her (the so-called *mund*); *morgengab*, a morning gift offered by the husband to the wife on the morning following the wedding; and the father's gift (*faderfio*), the trousseau that the bride received from her family home. What we are interested in here is not so much the misunderstanding, but Tacitus's comment on the gifts offered. They were to remind the woman that,

> she comes as an ally of her husband's labors and dangers, and will endure and dare the same things in peace and the same things in war; this is the meaning of the yoked cattle, the harnessed horse, the gift of arms. In this way she must live, in this way give birth: in the knowledge that she is receiving what she must deliver to her children without blemish or disgrace, what her daughters-in-law must receive and render in turn her grandchildren.
>
> Accordingly, they lead lives of well-protected chastity, corrupted by none of the enticements of public performances, none of the temptations of banquets. Men and women are equally ignorant of the secrets that letters can hold. Among a people so numerous, there are extremely few instances of adultery, the punishment for which is prompt and in the husband's power: in the presence of their relatives the husband expels his wife from the home, stripped and with her hair cut short, and drives her with a lash through the entire village. For prostituted purity there is no forgiveness; […]
>
> For no one there is amused at vice, nor calls the corruption of others and oneself "modern life." In fact, those communities do better still, in which only virgins wed and the hopes and prayers of a wife are done with once and for all. They receive one husband just as one body and one life, so that there may be no thoughts beyond him, no desire that survives him, so that they may love not their husbands, so to speak, but the state of marriage itself. To limit the number of children or kill any offspring born after the first is considered an outrage, and good morals there are stronger than good laws are elsewhere.[55]

When it comes to the punishment of adulteresses, Tacitus was well-informed. Scholars researching the so-called "bog bodies" have come across the bodies of

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55 Tacitus, *Germania*, chapters 18 and 19. On marriage payments among the Germanic peoples, see chapter 4.

women who were before death deprived of their hair, beaten, mutilated, and harassed, to be finally plunged into the bog. We can associate this with a norm of the Burgundian laws that required that unfaithful wives be killed in the bog.[56] We can also relate it to the 743 edict issued by Liutprand, king of the Lombards. It contains a chapter regarding a gang of women who committed robbery. The king was particularly shocked that they, in a sense, took the role of men: not only did they commit a crime, they also violated the moral taboo of the division of the sexes. Besides the financial penalty for robbery imposed by the law, Liutprand ordered his public agents to subject the culprits to drastic corporal punishment. They were to "seize those women and shave them and drive them through the neighboring villages of that region in order that other women shall not presume to commit such evil deeds" (*publicus* […] *comprehendat ipsas mulieres, et faciat eas decalvari et frustare per vicos vicinantes ipsius loci, ut de cetero mulieres tale malitia facere non presumant*).[57]

This was, most probably, a traditional form of repression practiced long before the king decided to use it against the women who had committed the masculine crime of robbery. The term *decalvatio* itself (found also in the edicts of 726 and 750) meant a degrading punishment that involved permanent disfigurement and censure. Most probably, the hair was wrenched off rather than cut.[58]

Archaeology and customary laws allow us, then, to confirm Tacitus's words and make them more precise. Yet Tacitus inscribed the otherwise credible information about the ruthless punishment of adulteresses into a pattern that, in his authorial design, was more important than empiricism. It is hard to imagine the illiterate Germans exchanging love letters. Praising them for not doing so, Tacitus had something else in mind. He was stigmatizing the promiscuity of his own fellow citizens. Interlaced with praise, the description of the moral austerity of the Germans served to sermonize to decadent Rome. The stereotype of the "noble savage" was to be put before the civilized world as a model of forgotten virtues.

This stereotype performed an identical function in the Christian literature of medieval Europe. In 745 or 746, Saint Boniface wrote a letter to the Anglo-Saxon king of Mercia, Aethelbald, in which he severely stigmatized the extramarital sexual intercourse of the addressee:

> Not only by Christians, but even by pagans is this sin reckoned a shame and a disgrace. For even pagans, who know not the true God, observe in this matter, as if by instinct

56 LC, XXXIV.

57 LL, Li, chapter 141, p. 208.

58 LL, Li, chapter 80, p. 178 and Aist. chapter 4; see, Gasparri, *La cultura*, pp. 140–141.

(*naturaliter*), the essence of the law and the ordinance of God, inasmuch as they respect the bonds of matrimony and punish fornicators and adulterers. In Old Saxony, if a virgin defiles her father's house by adultery or if a married woman breaks the marriage tie and commits adultery, they sometimes compel her to hang herself by her own hand, and then over the pyre on which she has been burned and cremated they hang the seducer. Sometimes a band of women get together and flog her through the villages, beating her with rods, and, stripping her to the waist, they cut and pierce her whole body with knives and send her from house to house bloody and torn. Always new scourgers, zealous for the purity of marriage, are found to join in until they leave her dead, or half dead, that others may fear adultery and wantonness.

The Wends [that is, the Slavs – K.M.], who are a most degraded and depraved race, have such a high regard for the bonds of matrimony that when the husband is dead the wife refuses to live. A wife is considered deserving of praise if she dies by her own hand and is burned with her husband on the same funeral pyre.

If, then, the heathen who, as the Apostole says, know not God and have not the law carry out by instinct the injunctions of the law and show the works of the law written on their hearts, it is time now that you who are called a Christian and a worshipper of the true God should […] cleanse your soul from its foul iniquities.[59]

The analogy of this argument to the 19th chapter of *Germania* is visible, but it does not consist in the similarity of formulations or even in the similarity of details. On the contrary, Tacitus did not know of, or in any case did not mention, forcing the adulteresses to commit suicide. There is no mention of hanging the seducer above the pyre of the seduced, nor of a collective lynch carried out by women. St. Boniface, in turn, never speaks of depriving the culprit of her hair, of throwing her out of her house in the presence of her relatives, or of the fact that it was the husband who made her run through the village while beating her. While naked in Tacitus, in St. Boniface the adulteress is half-naked, stripped to her waist, on her torturous path through the village. This substantial discrepancy of details makes it obvious that the authors could not have found inspiration in literary sources. St. Boniface did not borrow his descriptions of the Saxons from Tacitus. He relied on experience gained from his own missionary activity and on second-hand information. Most probably, he did not even know of *Germania*.

There is no doubt, however, that both Tacitus and St. Boniface deployed the same stereotypes. In both of them, the image of the austerity of manners among the barbarians is linked, as it were, with a moral that validates the description. While Tacitus meticulously inscribed this moral into his narrative, St. Boniface articulated his admonition crudely, without mincing words. In both cases, though,

59 MGH, *Epistolae*, vol. III, Berlin 1892, p. 342.

there is a similar idea; there are similarly restrictive moral norms and a similar understanding of the place of women in the patriarchal order of family and society. St. Boniface was in this respect a typical exponent of the Christian thought prevailing in his time, but even Tacitus's opinions did not significantly depart from pagan moralizing of the early empire. The axiological similarity between the two writers should not surprise us: the Church was heir to classical culture including the rigorism of moral injunctions and proscriptions.[60]

In order to propagate these injunctions and prohibitions, both Tacitus and Boniface made use of the stereotype of the "noble savage." Both writers held the barbarians as paragons of moral integrity in order to preach radical ideals of spousal morality. Tacitus applauded those German tribes that supposedly did not allow widows to remarry and made comments on this practice worthy of the sternest of Church moralists; the point was that a woman should fall in love not so much with her husband but with the institution of marriage itself. St. Boniface went even further. He described the Slavic custom of the wife's suicide following her husband's death with unhesitating approval. Both writers approved of the cruelty of the barbarians towards adulteresses. Even coercing the harlot to suicide or the custom of self-immolation, both thoroughly unacceptable from the Christian point of view, did not prevent St. Boniface from lauding the Saxons for punishing the harlots in such an exemplary manner.

What also characterizes Tacitus and the medieval writers is the similarity of structure: they are barbarians, yet in many respects more kind-hearted than the Romans; pagans, but better than Christians in many ways. They do not know the Christian God, but carry in their hearts the work of his laws, due to which they spontaneously (*naturaliter*) follow moral virtues. This sounds almost like Tacitus: "good morals there are stronger than good laws are elsewhere." We are not dealing here with a literary model but with something more complex and troublesome: a product of a cultural community. The legacy of classical culture imprinted itself on the ways the barbarian peoples were seen by the civilized writers of antiquity and the Middle Ages. The trouble is, that such a way of looking at things was at the same time a way of not seeing.

What Tacitus knew about the Germans, and Adam of Bremen about the Swedes and Prussians, was that their social diversification was meager and their standard of living simpler than in the civilized world. Both writers over-interpreted this knowledge, ascribing – unjustifiably, albeit in accordance with the stereotype of the "noble savage" – disregard for gold and luxury to the barbarian elites.

60 Wipszycka, *Kościół*, p. 278f.; Brown, *The Body*; Veyne, "La famille."

Fortunately, we can correct this image, even though the sources do not always make it possible.

The ancient and medieval writers had reliable information about the harsh norms and draconian measures which ensured that respect was accorded to the patriarchal order in the barbarian world. With this information, Tacitus and Boniface created a morality applicable to their own cultural contexts. They failed to notice the permissive aspect of the barbarians' relation to eroticism and family: assent to sexual encounters between unmarried free men and female slaves or half-free concubines, and the rights enjoyed by the offspring of such unions. In this realm, the customary norms of tribal law and practice developed and remained long after Christianization and in conflict with the requirements of the Church.[61]

A body of sound knowledge based on the experiences of merchants, emissaries, scouts, and missionaries, came to underlie many accounts of the hospitality of the barbarian peoples. Yet even here the image is distorted by misunderstandings in intercultural communication and by the power of stereotypes. The observers from the civilized world failed to comprehend that in tribal communities custom was the law. Nor did they understand the communal mechanisms of coercion. They were unable, therefore, to see that the acts of hospitality stemmed from an obligation impelled by coercion. They saw in such hospitality a sign of a natural goodness that corroborated the stereotype of the "noble savage."

Archaeology has made it possible to correct the assertions that the barbarian elites supposedly disdained gold. When it comes to moral rigorism and hospitality, it is possible to supplement and correct the evidence given by narrative sources with the help of the legal codes. Yet, is it not the case that the matrix of classical culture imprinted itself also on the codification of the legal tradition of the barbarian peoples? To what extent do the so-called *leges barbarorum* allow us to transcend the limitations of the scholar's perspective due to the unilateral character of the narrative sources?

61 Pieniądz-Skrzypczak, "Konkubinat."

Chapter II. The Laws of the Barbarians

1. From Recited to Written Law

In Pavia, on 22 November 634, King Rothari announced the first written codification of the law of the Lombards. In the epilogue-like chapter 386 of this act, we read: "With the favor of God and with the greatest care and most careful scrutiny, obtained by heavenly favor, after seeking out and finding the old laws of our fathers which were not written down [*inquirentes et rememorantes antiquas legis patrum nostrorum, quae scriptae non errant*] and with the equal counsel and consent of our most important judges and with the rest of our most happy army [*exercitus*] assisting, we have established the present lawbook containing those provisions which are useful for the common good of all our people. We have ordered these laws to be written down on this parchment […]. Issued and confirmed by the *gairethinx* according to the usage of our people, let this be strong and stable law." At the same time, the king made provisions for the future: "[…] those things which, with divine aid, we have been able to recapture through careful investigation of the old laws of the Lombards known either to ourself or to the old men of the nation [*tam per nosmetipsos quam per antiquos homines memorare potuerimus*] [should be preserved] in this edict."[62]

This is the only such solemn declaration of a royal codifier, made and written down at precisely the same time when the norms of tribal law were being transferred from oral tradition onto "this parchment" (*in hoc membranum scribere iussimus*). The double legitimization of the edict is noteworthy. An act of royal will itself, however, supported with a formula about the consent from the noblemen and the entire "people," was not enough. The ratification of the lawbook *per gairethinx*, that is, by the traditional ritual of acclamation at the assembly, still needed to be mentioned.[63] Although Rothari was not a merely a titular ruler, he thought it fit to emphasize that, apart from himself, and in accordance with his will, the assembly also spoke their mind on such a weighty matter. The old tribal custom (*ritus gentis nostrae*) required that the general approval of the dignitaries

62 LL, Ro, chapter 386, p. 102.

63 The Lombard word *gaiza*, also pronounced and spelled *gaire*, meant a spear (see Frankovich Onesti, *Vestigia*, p. 194); *thinx* is obviously the German *thing*, that is, the assembly. Chapter 386 of Rothari's edict thus refers to the ritual of decision making by the shaking of spears which was already mentioned by Tacitus and known in medieval Scandinavia; see Dilcher, "Langobardische Strafrecht," p. 168.

and all the warriors, that is, of all the Lombards, be expressed by shaking their spears at the assembly. Not without reason did the editors of the edict interchangeably use the ethnic name of the people (*Longobardi*) and the technical name of the army (*exercitus*) in the prologue.

Prior to 643, the law of the Lombards had not been put in writing, although it had long existed. So much was stated in black and white in the epilogue. What is noteworthy here is the declaration about the edict's relation to the earlier unwritten law. Rothari did not portray himself in the epilogue as a legislator but as a codifier of the old norms. The king strongly emphasized that he carefully searched in his memory for the ancient law of his ancestors in order to transfer it onto parchment. This was not about one individual's memory, but about the collective memory of the entire community, transferred from generation to generation. The elders (*antiqui homines*) evoked by the royal codifier in the epilogue most certainly played an essential role here.

Even though the edict was issued, the written law did not become exclusive. Rothari announced that he would continue to examine tradition, and draw on the legal memory of his people in order to supplement the edict with the norms he might have overlooked when working on the first codification. It is possible that the king, who already in an edict of 643 had modified a number of old rules, left the door open to further changes to the law of the Lombards under the pretence of supplementing it. Chapter 387, added after the epilogue and abolishing the blood feud for manslaughter, seems such a camouflaged innovation. Although he openly established and changed legal norms, Liutprand, the greatest codifier after Rothari, referred to the old customs (*antiquae cawarfidae*) in two cases.[64] They had for long been in force in judicial practice, the king explained, even though they had not so far been written down in any edicts. Liutprand filled in the gap, adding the new norms to the corpus of laws. He did exactly what Rothari declared in the epilogue of 643. There is no doubt that many customary norms remained outside the written law. Such was the case not only among the Lombards; the laws of the barbarians were of casuistic rather than of systematic character. The purview of these codifications varied, yet none comprised all the binding norms. Besides the written law, the unwritten law was also recognized, that which before codification enjoyed absolute reign.

Someone must have preserved this law in memory, spoken it at the assemblies where disputes were adjudicated and crimes punished, and made sure that tradition was being faithfully upheld. Amongst the Franks, passing the sentence was

64 LL, Li, chapters 77 and 132.

the prerogative of the so-called *rachinburgi*, who at a local judicial assembly (*in mallo*) performed a function similar to that which would later come to be known as a jury. They would sit in a prominent place at the assembly (*rachinburgi in mallobergo sedentes*) and were obliged to present to those gathered – probably to be acclaimed – the verdict they had all agreed upon. The verdict entailed recommending an appropriate norm, which meant – as *Lex Salica* and *Lex Ribuaria* explicitly defined it – to "speak the Salic law" (or the Ripuarian law).[65] Obviously, the *rachinburgi* had to know this law. Yet it does not seem likely that they knew the law because they had read it. The *mallus* was the center of the local assembly and court community.[66] The *rachinburgi* no doubt enjoyed respect within the community, but they were community neighbors and certainly could not read, especially in Latin. Judges of higher order, transcending local communities, must therefore have been the custodians of the legal tradition not only before the written codification of the law but also for some time after it.

In medieval Iceland, those holding the office of the law speaker (*logsogumadr*) were such custodians. A law speaker presided over the annual national assembly called the *Althing*, and, declaring the assembly open, he was to recite the rules of Icelandic law. The most famous among the *logsogumadrs*, Snorri Sturluson, held this office between 1215–1218 and 1222–1231. He was a man of writing, and the Icelandic customary laws had been put in writing around 1117–1118. Despite this, Snorri must have recited these laws thirteen times during his thirteen years in office. He had to recite them from memory rather than read them. Such was the customary duty of the *logsogumadr*. It was an ancient ritual which, in a traditional culture based on oral transmission, also had a tremendous practical value. In Norway, *lagmans* played a similar role, though on a regional scale: they spoke the law and presided over the assemblies in particular provinces. Konrad Maurer claimed that the foundations of the 12th century written codes of Frostating and Gulating were the customary laws recited at local assemblies by *lagmans*. Aron Gurewicz holds a similar opinion.[67] We do not, however, have any first-hand information about how the Norwegian laws were codified. Yet it does seem that the codification of the oral tradition of tribal law had to have proceeded in this way. Information and circumstantial evidence concerning the drawing up of the laws of the Bavarians (*Lex Baiuvariorum*), as well as the Salic and the Frisian laws suggest that this speculation is correct.

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65 *LS*, title LVII and *LRiB*, title LV.

66 Weitzel, *Dinggenossenschaft*.

67 Maurer, *Die Entehunsgszeit*, p. 41, 50f., 66, 73f., 82f.; Gurewicz, *Norweżskoje*, p. 16f.

The prologue to the laws of the Bavarians is an impressive display of medieval erudition. The structure was borrowed from Isidore of Seville's *Etymologiae*. At the beginning we are introduced to a host of ancient legislators, from Moses to Theodosius, after which, we are told that different peoples chose laws according to their own custom. "An ancient custom, in fact, is to be considered as a law [*longa enim consuetudo pro lege habetur*]. *Lex* is a written constitution; *mos* is custom derived from antiquity, although an unwritten law. For *lex* is named from *legere* [*nam lex a legendo vocata*], since it is written. […] custom is a type of law, defined through usage […]."

At this point the compiler departs from Isidore in order to present a view on the codification of the law of the Bavarians: "Theuderic, king of the Franks, when he was at Châlons, chose wise men within his kingdom who were learned in the ancient law. Under his instruction, he ordered the laws of the Franks, the Alamans, and the Bavarians to be written for each tribe that was under his control, according to his manner; he added what was needed and deleted the unclear and the disorderly. And what pagan customs were there were changed according to Christian law. And what ancient pagan customs King Theuderic did not correct, King Childibert began after this, but King Chlothar completed. All of this Dagobert, the most glorious king, revived through the illustrious men Claudius, Chadoindus, Magnus, and Agilulf; the best old laws were written down, and he gave each tribe a written law, which still exists today."[68]

In the form in which we know it, *Lex Baiuvariorum* does not originate from the times mentioned in the prologue but from the first half of the 8th century. The exact date the law was drawn up is subject to dispute. According to Franz Beyerle and Karl August Eckhardt, the law was drawn up in the Altaich abbey between 741 and 743.[69] This could explain the bookish erudition of the prologue and the Visigothic connections of the writer. Whoever the writer was, he certainly did not consider himself a codifier. He only provided the already existing text with a prologue. Or, perhaps, he also polished the law here and there in order to add a bit of literary refinement to it.

This does not mean that we should take for granted the prologue's statement that it was Theuderic I (511–534) who carried out the codification of the law of the Bavarians, and also of the Franks and the Alemanni as well as some other peoples. In fact, the Salic law was codified by Theuderic's father, Clovis I, in the last years of his rule (507–511), while the Ripuarian Franks had to wait long for

68 LBaiuv., *De legibus*

69 Beyerle, "Die beiden;" K. A. Eckhardt, "Die Lex Baiuvariorum."

their own turn. Harald Siems rightly notes that for Theuderic to have undertaken such an initiative on behalf of the Bavarians is surely beyond the parameters of historical probability.[70] Depicting Theuderic, who had ruled two centuries earlier, as the initiator of the first Bavarian codification of the law, the compiler of the prologue simply conveyed the view that *Lex Baiuvariorum* was a text with a very old and venerable provenience. The story about how Theuderic set about the task is not worthless, however. It is a projection of the experience of the clergy, who in the 8th century knew very well how law was codified. The author of the prologue understood perfectly that a written codification of the law had to follow old customs, which thus meant that the pundits of oral law had to be involved. He knew, moreover, that the old customs were blemished with pagan beliefs that the king attempted to eradicate during codification. Yet because the old tradition was so deeply rooted within society, he could not effect too many changes at once. We should not disregard this knowledge.

The so-called *Short Prologue* to the Salic law contains the oldest information about how the codification was carried out. This prologue comes from the 6th century, and in principle merits credibility, even though it was added to the body of legal norms some time after they had been written. It is noteworthy that it was not the king but the tribe that initiated the codification: "With the aid of God, it was decided and agreed among the Franks and their notables in order that peace be established among themselves, that all increase of litigation be curtailed […]." These sentiments bring to mind a decision of the assembly or, at least, the consensus of the assembly, especially since we read in the following sentence: "Therefore from among many men four were chosen who were named as follows: Wisogast, Arogast, Salegast, and Widogast from places beyond the Rhine named Botheim, Saleheim, and Widoheim. These men, meeting together in three different courts and discussing the causes of all disputes, gave judgment in each case in the following fashion" (*qui per tres mallos convenientes omnes causarum origines sollicite discutientes de singulis iudicium decreverunt in hoc modo*).[71] What follows these words is a list of sixty-five titles of the Salic law.

Salegast and Widogast can be understood as eponyms of Saleheim and Widoheim, two places located east of the Rhine. The names of the localities mentioned in the prologue apparently point to the places from which those chosen to codify the law came. They were undoubtedly Franks from homogenously Germanic regions of Austrasia. We should not expect that these people learned Latin and

70 Siems, *Lex Baiuvariorum*, HGR, vol. II, column 1890.

71 PLS, *Prologue*.

writing satisfactorily enough to immortalize the Salic law on parchment only ten years after Clovis's baptism. The four men chosen by the Franks from amongst themselves to codify the law performed the duty with which they had been entrusted not at a writing desk but *per tres mallos*.

The term *mallus* was a Latinized form of the Old German word *mahla* ("speech," "assembly"). It was also a synonym of the word *thing* ("assembly"). In the relatively old (1071), yet authoritative in matters of vocabulary, document by Udalrick, an abbot from Lorsch, we learn that a group of peasants was exempt from their obligatory participation in three general judicial assemblies (*mallus*), commonly known as *ungebotene ding*, which took place annually at the abbey hall (*a tribus principalibus mallis, qui vulgo ungeboden ding vocantur, quibus ad curtim Liutereshusin annuatim manniebatur*).[72] What is at stake here is the patrimonial jurisdiction held on the strength of a privilege by an abbot who was the landlord. But the judicial institutions themselves and their names had their origin in the times before privileges were introduced. The phrase *principalis mallus*, that is, *ungebotene thing*, meant a general assembly where inhabitants of a given jurisdiction met, in fact, obligatorily, on specific commonly-known days. *Gebotene thing* meant, on the other hand, an assembly held especially to hear a particular case. It often consisted of fewer participants, and was attended mandatorily by *rachinburgi* and the interested parties.

In the Salic law, the word *mallus* appears frequently and refers to a judicial assembly, either general or convened on a special occasion. We cannot assume that this word was used in the prologue in a different meaning. The significance of the case and the phrase *per tres mallos* indicate that these were three consecutive general assemblies. There, in front of the gathered people, Wisogast, Arogast, Salegast, and Widogast carried out the mission they were entrusted with. According to the laconic prologue, it consisted of examining the causes of all cases – not only of those that were brought during the three consecutive assemblies, but of all of them (*omnes causarum origines*), and in delivering the verdict in each of these cases (*de singulis iudicium decreverunt*). To pronounce the verdict at the assembly meant that an appropriate norm of the law of the Salian Franks was delivered. It can be concluded at this point that the four men chosen by the Franks to carry out the codification did the same thing that the Icelandic *logsogumadr* did at successive *althings*, and the Norwegian and Swedish *lagmans* at the regional assemblies: they all spoke the law. Wisogast, Arogast, Salegast, and Widogast

72 Cod. Laur., vol. I, no. 131; see, Schmidt-Wiegand, *Mallus*, HRG, volume III, column 217.

did so collectively and with special diligence, as they were especially chosen to perform this task being uniquely competent. In the process of codification, the role of these most accomplished speakers of the tribal law of the Franks was not to write, but to speak.

Someone else had to translate their words into Latin and write them down: a scribe, whose name apparently did not deserve to be immortalized in the prologue. Obviously, that scribe knew the language of the Franks; most probably he knew it better than Latin as we can gather from the numerous barbarisms appearing in the Salic law. The words of the law speakers that he wrote down had to be subjected to editorial treatment and censorship. It is in the peculiar structure of the Frisian law that we discover traces of such twofold redaction.

The decision to codify the customary laws of the Saxons, Thuringians, Chamavian Franks, and Frisians was made at Charles the Great's initiative at the assembly in Aachen in 802. The manuscript tradition of these codifications is scant. *Lex Saxonum* has been preserved in two copies, *Lex Turingorum* in one copy from the 10th century, while the text of the Frisian law is known to us only through the print edition published in 1557 by Johannes Herold.[73] The manuscript that was the basis of Herold's edition had been lost.

The text published by Herold consists of twenty-two titles of the Frisian law itself and of eleven titles described by the publisher as *Additions of the Wise Men* (*Additio sapientum*). Although the title, *Additio sapientum*, was most probably added by Herold himself, there is no doubt that it was not an integral part of the codified law. *Additio* is a collection of judgements delivered by two otherwise unknown people: Wlemar and Saxmund. At the very beginning, before the first title of the *Additio*, the name "Wlemarus" appears while in the middle of the third title, after paragraph 48, we encounter the straightforward statement: "These judgments dictated Wlemar" (*haec iuditia Wlemarus dictavit*). Paragraphs 59–75 were annotated in a similar way: "These judgements dictated Saxmund" (*haec iuditia Saxmundus dictavit*). The next set of norms was preceded by the characteristic formula: "Wlemar says" (*Wlemarus dicit*). Title VI was attributed to Saxmund, while Titles VII–XI were attributed to Wlemar.

Lex and *Additio* address the same crimes at times, but assign different kinds of punishment to be given for them. We can see this particularly in the case of the long list of punitive damages for various wounds and mutilations (*Lex*, tit. XXII and *Additio*, tit. II and III). Yet the text of the Frisian law itself also contains quite a few repetitions and inconsistencies. For instance, the amount of *wergild* is defined

73 See, H. Siems, *Studien zur Lex Frisionum*, pp. 144–151.

by *Lex Frisionum* in title I and title XV, yet in each case slightly differently. Willi Krogmann, Clausdieter Schott and Harald Siems have therefore rightly concluded that the text of *Legis Frisionum* published by Herold was not the final version of the law but a work in progress, a kind of semi-product of unfinished editing.[74] *Additio sapientum* was not, however, part of that work in progress or of the final version. It was not, as Herold mistakenly supposed, a later addition either, a selection of judicial judgements added to the codification of the law. The title – *Additions of the Wise Men* – is misleading.

We can best explain the role the so-called *Additio sapientum* played in the codification of the Frisian law with the example of Title XI dictated by Wlemar. He said that the man who had broken into a shrine (*qui fanum effregerit*) and stole sacred objects should be buried alive in the sea sand after his ears had been cleft and he had been castrated.[75] To include this evidently pagan norm into the Christian code of laws drawn up under the auspices of Charles the Great was out of the question. There is, after all, a grain of truth in what Philipp Heck argued: the norm could have been used – obviously, after it had been suitably modified – to protect Christian sacred objects. In *Capitulatio de partibus Saxoniae* of 785, Charles the Great demanded that "the Churches of Christ which are now being built in Saxony […] should enjoy not less but greater and higher honor than the shrines of idols have had" (*fana idolorum*). In chapter 3 of *Capitulatio*, the king introduced the death penalty for breaking into and plundering a church (*si quis ecclesiam per violentiam intraverit et in ea per vim vel furtu aliquid abstulerit*). This penalty was imposed for a deed similar to that described in title XI of the Frisian *Additionis sapientum*.[76]

As a matter of fact, title V of *Lex Frisionum* names those who could be killed with impunity (*de hominibus, qui sine conpositione occidi potest*). Thus, there was no fine for killing the "duellist, who is killed in [trial by] combat; and the adulterer," or a robber and arsonist caught red-handed, or a mother who induces miscarriage, and "he who demolishes a shrine." The act of breaking into a sanctuary is described here in exactly the same words we find in title XI of the *Additions of the Wise Men*: *qui fanum effregit*.[77] It seems obvious that it was not the pagan tradition borrowing this formula from the Christian code but the other way

74 Krogmann, "Entstehungszeit und Eigenart," p. 76; Schott, "Der Stand," p. 42; Siems, *Lex Frisionum*, HRG, vol. II, column 1922.

75 LFris, *Additio sapientum*, XI; see, above, chapter I, note 11 and the text it refers to.

76 LST, CPS, chapters 1 and 3, p. 37f. See also, Heck, *Die Gemeinfreien*, p. 236.

77 LFris, V, 1.

around: the editors of the Frisian law adopted, verbatim, this formula from the pagan customary norm written down in the *Additio*. After it had been purged of the details concerning cleaving the ears, castrating, and burying the culprit alive in the sea sands as sacrifice to pagan gods, the formula could be used to protect Christian shrines. Political and religious correctness could have still called for a replacement of the word *fanum*, which brought to mind a pagan shrine, with the unambiguous *ecclesia*. Perhaps this was done in the course of further editorial work, the final result of which we do not know. There is no doubt, however, that the editor of the surviving version of the Frisian law used the formula taken from *Additio* in title V, removing from Wlemar's words what was too much at odds with Christianity.

The answer to the question about the character of the so-called *Additions of the Wise Men* now lies at our fingertips. In spite of the name given to it by Herold, it relates to the initial stage of the codification process. It was not an annex or even a half-product; it was raw material. The manuscript in which the 16th century publisher saw a collection of judicial judgements was in fact a record of the minutes of the pronouncements by two law speakers that was produced for the purpose of codification. In the *Short Prologue* to the Salic law, the roles of Wisogast, Arogast, Salegast, and Widogast were defined in such a way as if they were meant to pass sentences: *iudicium decreverunt*. In fact, they were reciting norms that were part of the legal tradition of the Salic Franks. What Wlemar and Saxmund did when codifying the law of the Frisians was defined here nearly identically: *haec iudicia Wlemarus dictavit, haec iudicia Saxmundus dictavit*. The particularly characteristic expression, *Wlemarus dicit* ("Wlemar says"), makes it abundantly clear that what we have here is an oral pronouncement of legal norms. The anonymous scribe wrote them down according to Wlemar's, Saxmund's, or others' dictation. This was the first stage of the process of codification. If we discount disruptions resulting from the difficulties of translation, conceptual incompatibility, and misunderstandings, at this stage, the codification of the legal tradition was, in principle, faithful.

The next stage involved the editorial processing of the gathered material. What we encounter at this stage are, for instance, erudite references to Roman law, borrowings from earlier recorded laws of other barbarian peoples, and, above all, just as in the case of title V of the Frisian law, censorial modifications that purged the traditional norms of the most glaring signs of pagan cult. In the process of codification, the Christian culture of the written word met traditional culture based on oral transmission. It was an encounter marked by conflict, if only because the oral tradition transmitted the customary law in conjunction with myths and values which Christianity could not accept.

2. The Law and the Song

"In ancient lays," Tacitus wrote of the Germans, "their only type of historical tradition [*quod unum apud eos memoriae et annalium genus est*], they celebrate Tuisco, a god brought forth from the earth. They attribute to him a son Mannus, the source and founder of their people, and to Mannus three sons, from whose names those nearest the Ocean are called Ingvaeones; those in the middle, Herminones, and the rest, Istvaeones. Some people […] maintain that there were more sons born from the god and hence more tribal designations – Marsi, Gambrivii, Suevi, Vandilii […]."[78]

We will not investigate Tuisco's identity. Let it suffice that it is with him that, according to Tacitus, the genealogy of the Germanic gods begins. The fact that he was earth-born suggests that it was a theogonic myth. The meaning of the name Mann raises no doubt, but it needs to be emphasized that this divine prehistoric man, son of Tuisco, was depicted here in ethnic terms, as the forefather of all Germans. The conclusion that *origo gentis* originates from Mann cannot be understood differently. What is more, the names of the more prominent Germanic tribes supposedly stemmed from the names of Mann's sons. Tacitus did not assume responsibility for the latter view, but the observations by "some people" – Pliny the Elder or others – lay at its foundation. They probably thought that all Germanic peoples attributed their origins to one of the gods. Anyway, even Tacitus was convinced that in Germanic cultures ethnogenetic myths stemmed from the theogonic myth.

Tacitus's remark that the "ancient songs" (*carmina antiqua*) were for the Germans the only vehicle with which to transmit, from generation to generation, the repository of collective memory seems equally important. Were those who, with these songs, presented the images of the gods and the collective past of the people also the speakers of the tribal law?

This is precisely what Stefano Gasparri argues. He takes note of the role that, according to the epilogue of *Edictum Rothari*, the *antiqui homines*, that is, the "old men" or "the elderly," played in the process of codification. We cannot identify them with the dignitaries of the monarchy who in the same epilogue were described as *primatos iudices*. They were not simply senior in terms of age, either. In chapter 386 of the *Edictum*, *antiqui homines* were the people to whom the king reached out in order to draw from the depths of collective memory the hitherto unrecorded norms of the old law. According to Gasparri, *antiqui homines* performed a special function in the archaic culture of the Lombards; they were

78 Tacitus, *Germania*, chapter 2.

"the people of memory," the custodians of tradition, both legal and mythological, of the tribal community. In tribal societies, the transmission of these traditions required, apart from knowledge, a particular communicative skill: recital, or, as Tacitus put it, singing.[79]

This idea finds firm support in the prologue to the edict. After the rhetorical justification of the benefits of legislation, a justification embellished with borrowings from Justinian I's *Novellae*, there is a sudden change of subject matter: "In these matters our concern for the future assures us that what we do here is useful and so we have ordered the names of the Lombard kings, our predecessors, and from what family they come, to be noted down here as we have ascertained them from the older men of the nation." What follows these words is a list of seventeen successive rulers, beginning with "the first king […] King Agilmund, from the family of the Gugins," and ending with Rothari himself, "from the family of the Harode."[80] *Antiqui hominess* – no doubt the same ones that are mentioned in the epilogue – were thus the purveyors of knowledge about the unwritten laws of the ancestors and of the historical knowledge of the progression of the Lombard kings.

This list was not a product of genealogical memory. The Lombard monarchy maintained no dynastic continuity. Rothari, for instance, was the first king *ex genere Harodos*. He did not fail to put, right after the list of the kings, his own genealogy comprising twelve generations. He himself produced this certificate of excellence, relying on his own memory and without any help from "the old men." The list of kings who were not ancestors of Rothari was needed for a different reason; it constituted a framework of historical tradition and was put in the solemn prologue in order to legitimize the codification.

Indeed, it was a bare skeleton of a tradition, reduced to a dry list of names, garnished occasionally with information about the patronymic affiliation of the particular kings or about some likely kinship between an heir to the throne and his predecessor. Only Alboin deserved to have his achievements mentioned ("Eleventh was Alboin, son of Audoin, who […] led the army into Italy"). What seems especially significant here, is that the convention of using a list of kings did away with any ideas of a pre-royal history of the Lombards, although the words of the prologue suggest (*ex quo in gente nostra Langobardorum reges nominanti coeperunt esse*) that these ideas were still alive. The decision to present the historical tradition in such a truncated version was most probably dictated by censorial reasons.

79 Gasparri, "La memoria," pp. 6–8.

80 LL, Ro, p. 13f.

Rothari himself was in fact an Arian; perhaps he did not want to further complicate his relations with the Church by openly affirming the pagan elements of their tradition.

When it comes to those pagan elements, we are not, however, forced to rely on speculation. About thirty years after Rothari's edict, the tradition of the Lombards was written down in a fuller version. Here is the first chapter of a text known as *Origo gentis Langobardorum*:

> There is an island that is called Scandan […] in the regions of the north, where many people dwell. Among these there was a small people that was called the Winniles. And with them was a woman, Gambara by name, and she had two sons. Ybor was the name of one and Agio the name of the other. They, with their mother, Gambara by name, held the sovereignty over the Winniles. Then the leaders of the Wandals, that is, Ambri and Assi, moved with their army, and said to the Winniles: "Either pay us tribute or prepare yourselves for battle and fight with us." Then answered Ybor and Agio, with their mother Gambara: "It is better for us to make ready the battle than to pay tributes to the Wandals." Then Ambri and Assi, that is, the leaders of the Wandals, asked Wotan [Odin, god of warriors – K.M.] that he should give them the victory over the Winniles. Wotan answered, saying: "Whom I shall first see when at sunrise, to them will I give the victory." At that time Gambara with her two sons, that is, Ybor and Agio, [who were chiefs over the Winniles,] besought Frea, the wife of Wotan, to be propitious to the Winniles. Then Frea gave counsel that at sunrise the Winniles should come, and that their women, with their hair let down around their face in the likeness of a beard, should also come with their husbands. Then when it became bright, while the sun was rising, Frea, the wife of Wotan, turned around the bed where her husband was lying and put his face towards the east and awakened him. And he, looking at them, saw the Winniles and their women having their hair let down around the face. And he says, "Who are these Long-beards?" [*qui sunt isti longibarbae?*]. And Frea said to Wotan, "As you have given them a name, give them also the victory." And he gave them victory, so that they should defend themselves according to his counsel and obtain victory. From that time the Winniles were called Langobards.[81]

This is a pagan ethnogenetic myth in a form uncontaminated by any Christian intervention. It was transferred onto parchment straight from the oral tradition. Beneath the undemanding Latin one catches glimpses of the original structure of an epic intended to be recited. Particularly characteristic is the repetition of the same words and expressions, so that they can better remain in the memory of the listener. The Latin translation could not convey the catchy alliteration most probably present in the German original. Despite this, it is clear that this is an old song. It is songs like this that Tacitus referred to.

81 OGL, pp. 105–107.

The myth links the transformation of the Winniles into the Lombards with a change of the tribal cult. Until then, Frea was their protective goddess. From now on and under a new name, they became a people of warriors under the special protection of Odin-Wotan.[82] This transformation and their victory over the Wandals marked the beginning, according to *Origo gentis*, of the multi-generational wandering that led the Lombards to their fate, that is, the conquest of Italy. Some kings appeared, too. Agilmund, just as in the prologue to the edict, was the first. *Origo gentis* reveals something about him that the official prologue is silent about – that Agilmund was the son of Agio, that is, of one of the Dioscuri brothers, the leaders of the people at the moment of the transformation of the Winniles into the Lombards. Rothari consistently removed from the prologue everything related to this myth of their origins.

The act of naming the Lombards constitutes the ideological core of the myth. It gave rise to the identity of the tribal community of the Lombards. In traditional culture, for a culture to have a name was no less significant than for a child to have one. To give a name was a father's responsibility. Asking, driven by Frea's trick, "Who are these Long-beards?" (*longibarbae* in Latin, *Lange Barten* in contemporary German – that is, Lombards), Wotan unwittingly but irrevocably gave the Winniles a name that was one of his own nicknames (Long-beard). This, in effect, meant an adoption of the people by the god. This is why Wotan, obliged to perform the role of a father to his adopted children, gave them what he had. Because in German mythology he was a guardian of warriors and a granter of victories, he not only gave his people the victory over the Wandals, but also assured that the Lombards would always be victorious.

We can understand why Rothari, in the prologue to his edict, decided against challenging Christianity. Yet, we also have to understand the significance that the myth, omitted from the prologue, had to the Lombard warriors. Their outward appearance, especially their hairstyles, was depicted on the frescoes in the royal residence in Monza built by queen Theodelinda. The frescoes were not preserved, but they were described by Paul the Deacon. This is how we know that at the beginning of the 7th century, the Lombards had their napes shaved, while their hair was very long and parted in the middle of the head in such a way that it encircled the face and joined the beard.[83] The men's appearance signaled their tribal affiliation and their warrior status by a visible reference to the myth of Frea, Wotan, and the Winniles' transformation into the Lombards.

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82 Gasparri, "La cultura," pp. 12–16.

83 PDHL, IV, 22, p. 200; Gasparri, "La cultura," pp. 55–61; Bognetti, "Santa Maria."

The ethnic law (*professio legis*) was a major symbol of tribal belonging. The omission of the origin myth of the tribe in the prologue to the edict must have been seen as a painful removal of a symbol of collective identity. Rothari attempted a surrogate legitimization of the history of the codification of his law by inserting the list of kings into the prologue. It was a shoddy half-measure that apparently proved insufficient. That is why the pagan saga titled *The Origin of the Nation of Lombards* soon came to be translated into Latin and began a peculiar career in official literature. It survives in three manuscripts from the 9th and 11th centuries as a text preceding Rothari's edict. The manuscript addition of the saga to the edict must have been something habitual in the 8th century, if Paul the Deacon himself thought *Origo gentis Langobardorum* to be the "prologue of the edict which King Rothari composed."[84] Formally speaking, Paul the Deacon made a mistake, although it was a significant one. Stefano Gasparri has convincingly argued that once it had been written down, the saga *Origo gentis Langobardorum* indeed functioned as the second (and in terms of the position it took in the manuscripts, it functioned as the first) prologue to the edict.[85] What Rothari was officially unable to insert into the manuscript tradition of Lombard law was stealthily, by the hands of the scribes, introduced into its pages. What was thus restored was the legitimization of the tribal law through a pagan myth. The Lombards were baptized, but the law, if it was to earn respect in their eyes, had to announce at the beginning this fundamental truth that every free Lombard was an adopted descendant of Wotan.

One occasionally encounters pagan reminiscences in European medieval Latin literature. The mythological historical tradition of the Goths, once written down by Cassiodorus, was transmitted in a version edited by Jordanes. We can recognize there, the tribal saga of wandering, the starting point of which – as in the Lombards – was the moment of departure from their Scandinavian fatherland. The Venerable Bede writes of the Anglo-Saxon tradition, according to which the two brothers, Hengist and Horsa, who brought the Angles to Britain, were the descendants of Wotan. He also observes that the royal dynasties of many countries derived their genealogy from Wotan.[86] The Lombard *Origo gentis Langobardorum* is not, as can be seen, an entirely isolated case.

Yet, when set against the backdrop of the European literature of the Middle Ages, *Origo gentis Langobardorum* is an absolutely notable exception. Its exceptionality lies in the fact that, in the end, it had not been possible to separate the

84 PDHL, I, 21; Annalisa Braciotti examines in detail the manuscript tradition in the OGL edition, pp. 57–79.

85 Gasparri, "La cultura," pp. 37 ff.

86 Jordanes, p. 12f. Venerable Bede, HEGA, I, 15.

record of the pagan mythological and historical tradition of the Lombards from the record of their legal tradition. To be more precise, Rothari attempted to separate the two traditions, inserting by way of compensation, the list of the kings into the prologue to the edict. But this official separation of the saga from the law did not last long. After twenty or thirty years, this separation was overcome by nothing less than *Origo gentis Langobardorum*, which was introduced into circulation as a semi-official, second prologue to the law.

In this case, the exception reveals the rule. Separating the pagan myth from the law, Rothari behaved just like all the royal codifiers in barbarian Europe. But for reasons which will be discussed later, the monarchy organized in Italy as a commonwealth of Lombard warriors was so inextricably linked, in terms of ideology and politics, with the tribal tradition, that it restored the mythological roots of its laws. Thanks to this, we can imagine what came to be removed when the legal traditions of the barbarian peoples were being codified. The customary laws of those peoples were written down at different times and under a variety of historical circumstances. The overall outcome of the contacts between Roman culture and the traditional cultures of the barbarian peoples and the mutual influences of those contacts were also varied. Yet, in each case, the written codification of the law meant that there was no room for Wotan, Tiwaz, Thor, Perun, or Veles within the system of legal norms. Christ could not play their role, because he was from a different world. What happened, therefore, was a separation of the law from *sacrum*. This was a profound change that went beyond the narrowly conceived notion of legitimization, and one that reached to the very cultural foundations of the system of social norms.

3. Barbarians and Romans amidst the Ruins of the Empire: The Principle of the Ethnic Separation of Laws

Built on the ruins of the Western Roman Empire, the kingdoms of the Visigoths, the Burgundians, the Franks, and the Lombards were states of ethnic minorities not merely in name. In each of these monarchies, a barbarian people represented by royal power occupied a position of political authority in relation to the much more numerous Roman population. The groups in power had to cope with this situation by creating structures able to exert authority not only over the tribesmen of the king but also over Roman society. Adapting to their role as the heirs to the empire and coexisting on a daily basis with the indigenous inhabitants, the barbarians inevitably fell under the influence of Roman culture. When it came to the law, however, the barbarians and the Romans remained separate communities. The German newcomers introduced into Roman Europe the so-called principle

of "personal law" and promoted it to a high rank within their political system. In accordance with this principle, every free person was to live and be judged according to the law of the tribe to which that person belonged.

Reinhard Wenskus has rightly highlighted the significance of this aspect of tribal ties. In his view, the tribe was a community of the law.[87] The attachment to the law of one's forefathers as a hallmark of tribal identity was strengthened in confrontations with foreigners – in times of migration and on newly settled lands. In 569 a considerable group of Saxons accompanied the Lombards in the occupation of Italy and settled in the conquered territories. Yet in 573 thousands of Saxon warriors with their families and belongings left Italy in order to "return to their own country" with the aid of King Sigisbert. The reason why they made such a dramatic decision was, according to Paul the Deacon, the fact that they were "not permitted […] by the Longobards to live according to their own laws" (*neque eis a Langobardis permissum est in proprio iure subsistere*).[88]

We do not know if Paul the Deacon accurately interpreted the motives that guided the Saxon allies of Alboin. What is certain is that Paul the Deacon himself and his contemporaries on whose opinion he relied considered the fact that the Saxons had their own law as a pledge of tribal identity. The inability to establish and maintain a distinct law was believed, among the Lombard opinion makers towards the end of the 8th century, to be a direct threat to the survival of the community. In the face of such a threat, leaving the inhospitable land seemed a thoroughly understandable reaction.[89] The assimilation of particular individuals was possible, yet an imposed assimilation of an entire group was out of the question. When it came to the relations between those holding political power and the Romans, the principle of "personal law," that is, of the ethnic autonomy of the laws, was canonical and it confirmed the superiority of the royal tribe over the native inhabitants of the conquered land.

Classical German historiography unanimously affirmed the personal character of the barbarian laws. In the Germany of the 1930s and 1940s, however, a new school of historical studies emerged which contested the crucial assumptions of its predecessors. This school of thought comprised scholars whose historical imagination had been shaped by the generational experience of National Socialism: Otto Brunner, Heinrich Dannenbauer, and Theodor Mayer.[90] In the political

87 Wenskus, *Stammesbildung*, pp. 38–44.

88 PDHL, III, 6. Gregory of Tours depicts this event slightly differently, GT HF, IV, 32.

89 Gasparri, "La cultura," p. 35.

90 Mayer, "Die Entstehung;" Mayer, "Die Ausbildung;" Dannenbauer, "Adel, Burg und Herrshaft;" Dannenbauer, "Adelsherrschaft;" O. Brunner, *Land und Herrschaft*.

system of the Germanic tribes, they saw, above all, the structures of power and chiefdom. The position taken by earlier historians who had emphasized the free condition and the crucial political role of the free common people within the system of the democracy of the assembly was, in the eyes of this new generation of medieval scholars, a naive illusion born of a democratic liberal creed. The codifications of the barbarian laws, so eagerly analyzed by the most prominent scholars of German historiography, aroused much less interest among the historians of the new school. To them these laws were, as Hans Kurt Schulze aptly noticed,[91] uncomfortable, and their usefulness in historical research on tribal political systems was treated with scepticism.

In the 1970s, one of the last representatives of the aging "new school," Karl Bosl, questioned the existence of the principle of "personal law" in the romano-barbarian monarchies. In his view, these laws did not have a personal-ethnic character, but were, instead, territorial; what the "tribal" names designated were the particular provinces of the kingdom of the Franks for which the Merovingian rulers issued regional collections of legal norms. These norms, according to Bosl, had little to do with the legal traditions of the particular tribes but were applied to all the inhabitants of the province irrespective of tribal affiliation and were a vulgarized mutation of the late ancient Roman law adapted to local conditions.[92]

Karl Bosl failed to refer to the sources that contradict his conception, but he did find some followers. His idea was taken up by the representatives of another critical trend in European and American medieval studies who subjected both the claims put forward by classical historiography as well as the ideas held by its critics from the school of Theodor Mayer and Heinrich Dannenbauer to revision. Paolo Delogu has, with detachment and perspicacity, yet without disrespect, characterized the stance of the newest contesters thus: "They question, more or less radically, the very idea of juxtaposing Germanic culture to Roman culture and they are inclined to treat the barbarians as an organic, integrated ingredient of the complex world of late antiquity. […] This novel understanding does not seem less ideologically contingent than the older one which deployed the juxtaposition between the Roman and German legacy as a standard marker of the structure and historical dynamics of European civilization. It seems to me, however, that the most recent historiography is ready to describe the phenomena

91 Schulze, "Die frühmittelalterliche Stammesrechte," chapter 5. I wish to thank Hans Kurt Schulze for making the German manuscript of this article – published only in Japanese translation – available to me.

92 Bosl, "Die sogennanten," pp. 129 ff.; see also, Bosl, *Die Grundlage der modernen Gesellshcaft*, p. 79.

of the past in a manner accordant with the problems pervading the developed societies of the West today, societies that are increasingly multi-ethnic and concerned with diminishing the civilizational contrasts and integrating the various cultural and ethnic groups that come into contact with one another as a result of intensified migration."[93]

Rejecting the traditional vision of the migration of peoples, the historians of the newest wave treat the German kingdoms in Gaul, Spain, and Italy as an intended component of Roman defense politics carried out by means of barbarian allies (*foederati*). When a scholar adopts such a viewpoint, the viewpoint of Roman logistics, as it were, then the Goths, the Burgundians, the Franks, and perhaps even the Lombards no longer look like conquering tribes but rather like garrisons that guard the empire and for whom the Roman treasure must secure a livelihood. Walter Goffart and Jean Durliat have even formulated a theory regarding the survival of the Roman tax system, not only in Italy under the Ostrogoths or in Visigothic Spain, but also on the entire territory of the Western Empire up to Carolingian times. All the barbarian kingdoms based their own existence, or so these scholars claim, on this system and thus, even after the disappearance of imperial rule, they were the main element of the largely unchanged Roman political order.[94] The supporters of this theory seem to treat rather literally Patrick Geary's brilliant paradox: "The Germanic world was the greatest and the most durable work of the military and political genius of Rome."[95]

This kind of vision assumes the fast and thorough acculturation of the Germanic peoples in the realm of the law as well. The influences of the vulgarized Roman law so easily discernible in the oldest Visigothic and Burgundian codifications have been taken to provide a basis for some far-fetched generalizations. Patrick Amory draws on the idea proposed by Karl Bosl and in a study on the Burgundian *Liber constitutionum* questions the ethnic and legal dualism of the barbarian hereditary states. Wolf Liebeschuetz also leans towards this view, although it is not the unanimous opinion of scholars. The opinion regarding the existence of ethnic and legal dualism, or, more properly speaking, of pluralism

93 Delogu, "L'Editto," p. 330f.

94 Goffart, *Barbarians and Romans*; Durliat, *Les finances*. Goffart's and Durliat's theses, especially in relation to the Lombard Italy and the kingdom of the Franks, gave rise to some serious polemical reactions. See, Cesa, "Hospitalitas;" Barnish, "Taxation;" Wickham, "The Other Transition" and "La chute de Rome."

95 Geary, *Before France*, p. VI.

within the state of the Franks was upheld and forcefully maintained by Hans K. Schulze. Simeon L. Guterman also shares this view.[96]

I am not writing a history of the twentieth-century historiography on this topic. From my point of view, the dissonance in historiographic literature is a call to return to the primary sources. A review of the primary sources relating to the principle of "personal law" seems necessary because the possibility of looking for traces of tribal legal traditions within the codifications carried out by the barbarian rulers depends on the resolution of this question.

According to *Prima constitutio* which appears at the beginning of the Burgundian law, matters of dispute between a Burgundian and a Roman must be settled "according to our laws," while "we command that Romans be judged by the Roman laws just as has been established by our predecessors." To prevent the judges from pleading ignorance of the Roman law, they were to receive its text together with explanations indicating how to adjudicate.[97]

In light of this regulation, the existence of two legal systems – one for the Burgundians and another for the Romans – on the same territory is beyond doubt. If King Sigismund, who in 517 ordered this norm to be written in *Prima constitutio*, attributed this to the decisions of his predecessors, then it can be supposed that the ethnic and legal dualism appeared here together with the Burgundians, that is, shortly after 443.

The laws which Sigismund conceptually contrasted with the Roman laws and defined as *leges nostrae* were "ours" in a double sense: ethnically – as the laws of the Burgundians; and politically and institutionally – as the product of the royal codification carried out with the consent of and in collaboration with the mighty (*habito consilio comitum et procerum nostrum* […] *communi tractatu compositae et emendatae*). The same could not be said about the Roman laws. The king of the Burgundians could not represent himself as their codifier. He could only assure the judges that they would receive the text of those laws together with their explication (*formam et expositionem legum conscriptam*) and advise them to acquaint themselves with it. The text is, most probably, the so-called *Lex Romana Burgundionum*, a compilation consisting of excerpts of various codified laws and legal treatises from the period of the late Empire.[98]

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96 Levy, *West Roman Vulgar Law*; Amory, "The Meaning;" Liebeschuetz, "Citizen status" (see also his "Cities, taxes" where Goffart's and Durliat's theory has been subjected to a detailed critique); Schulze, "Die frühmittelalterliche Stammesrechte;" Guterman, *The Principle of Personality*.

97 LC, titles I and VI.

98 Nehlsen, *Lex romana Burgundionum*, HRG, vol. II, columns 1927–1930.

A similar compilation – *Lex Romana Visigothorum* – had been used since 506 in the kingdom of the Visigoths. It was official in character because it had been drawn up on the orders of Alaric II. The compilation entitled *Breviarum Alarici* was named after the king even though Alaric II did not supplement the norms of the Roman law with any new regulations. Alvaro d'Ors over-interpreted the king's lack of legislative initiative, concluding that *Lex Romana Visigothorum* was a product of legal erudition stripped of any public meaning, because, in practice, the inhabitants of the kingdom supposedly lived by the law of the Visigoths, the written codification of which had been carried out by Alaric II's predecessor, King Euric (466–484).[99]

It is impossible to agree with Alvaro d'Ors assumption. Compiled on the orders of the king by a group of bishops and other experts on the Roman legal legacy authorized to perform this task, *Lex Romana Visigothorum* cannot pass as a product of private erudition. This was an official text which, according to its initial declaration (*commonitorium*), contained the single binding version of the Roman law and its interpretation intended – similarly to *Lex Romana Burgundionum* – for judiciary use. But the king of the Visigoths, like the king of the Burgundians, was not a Roman lawmaker. He did not replace the codes of Theodosius or other emperors with his own norms. He ordered an appropriately simplified summary of these codes to be drawn, so that the judges knew and understood properly the Roman law, as it was still binding for the Romans in his kingdom. Simultaneously, a separate law of the Visigoths was also binding, a body of laws that had been earlier based on oral tradition, and since the times of Euric, on royal codification. *Codex Euricianus* and *Breviarium Alarici* articulated in writing the ethnic and legal dualism existing in the state of the Visigoths.[100]

Lex Romana Visigothorum and *Lex Romana Burgundionum* were based on the legal codes of the by-then defunct empire and were not, therefore, free of anachronisms. Both codes of law contain references to offices no longer existing or to the penalty of hard labor in mines, no longer carried out for lack of mines. Deprived of its legislation, the written Roman law was increasingly detached from reality and in practice yielded to customary law. The lack of norms corresponding to the new social situation presented increasing difficulties. When

99 d'Ors, "La Territorialidad," p. 121; Schott ("Der Stand," p. 33) and Siems (*Lex Romana* Visigothorum, HRG, vol. II, columns 1940–1949) hold a different view.

100 What put an end to this dualism in the middle of the 7th century was Receswind's codification. See King, "King Chindasvind." This was possible due to the early and profound cultural Romanization of the Visigoths and also to the fact that the law became similar to the vulgar Roman law. See Levy, *West Roman Vulgar Law*, pp. 15–17.

the king of the Burgundians decided to introduce two regulations of his own to the official Roman law code, he felt compelled to justify why he was doing it: "Because when it comes to the composition for the killed [slaves], the Roman law does not contain any clear ruling" (*quia de preciis occisorum nihil evidenter Lex Romana constituit*).[101]

Under the pressure of considerable needs, new norms concerning the Romans were at times added to the barbarian law codes. In this way, the same damages for injuries were established in the Burgundian *Liber constitutionum* for both the Romans and the Burgundians.[102] Similarly, Clovis I passed and introduced several Salic norms concerning the Romans into his codification of the law of the Franks. These mostly concerned wergild. Wergild was a punishment for murder, commonly imposed among the barbarian peoples yet unknown to civilized Rome. It was paid to the relatives of the victim as redress for the wrong suffered and to buy off revenge. In title XLI, *Lex Salica* states that in the case of killing "a free Frank or any other barbarian who lives by Salic law (*si quis ingenuo Franco aut barbarum, qui lege salica vivit, occiderit*)," two hundred solidi have to be paid. The amount was tripled if the man killed was not only a free Frank, but also the king's antrustion.

The term antrustion (*trustis*) referred to both the king's adjutant warriors and his associates, bound to the king through an oath of fidelity based on Germanic models of fellowship. Besides them, the king also had antrustions from the Gallo-Roman elite at his court. In Salic law they were called the "king's table companions." In title XLI, cited above, a separate norm was devoted to these companions: "He who kills a Roman who is a table companion of the king's" (*Romanus homo, conviva regis*) would have to pay three hundred solidi while the penalty for killing a free Roman landholder who is not the king's "table companion" (*Romanus possessor qui conviva regis non est*) was one hundred solidi. The penalty for killing "a Roman who pays tribute" was sixty-three solidi.

Thus, the wergild for the Gallo-Roman antrustion was smaller by half than the wergild to which a Frank performing an analogous function was entitled. There was the same disproportion in the case of free people who did not perform any official function: if they were Franks or other Germanic peoples "liv[ing] by Salic law" they were entitled to a wergild twice as high as a Roman would receive. This is a clear indication that the Romans did not live by Salic law. In terms of the amount of wergild, *Romanus possessor*, a person undeniably free and landholding,

101 LRB, 2; see also 2,5 and 2 as well as 30, 2.

102 LC, XXVII.

was on equal footing with a half-free person (*litus*). This leveling finds a compelling expression in title XLII of the Salic law. It defines the amount of the penalty for a band attack on a house together with the murder of the owner. If the owner was not one of the king's sworn antrustions but was "a freeman" (*homo ingenuus*), then the penalty was six hundred solidi; if he was a Roman or a half-free man, then "one half this amount" was due.

The point is not simply that the wergild for a half-free man was one hundred solidi, and thus was equal to the wergild of a Roman landholder. The formulation of title XLII where "a free man" (*homo ingenuus*) is set off against a "Roman or half-free man" (*de Romanis vero vel letis*) is indeed unreflective and certainly does not negate the personal freedom of the Roman, but it does suggest something. The codifier without a second thought ascribed ethnic value to the term *homo ingenuus*. We are talking here about a free man who was subject to the law of the Franks, the carrier of its norms, and thus a Frank. A free Roman was conceptually opposite to a Frank. He is depicted as equally opposite in title XLI: on one hand, there is "a free Frank or other barbarian who lives by Salic law," and on the other, a Roman (*conviva regis* or only a *possessor*), also free, yet living by a different law.

We can also see this differentiation in title XIV: "1. He who robs a freeman by waylaying him […] shall be liable to pay sixty-three solidi. 2. If a Roman robs a Salic barbarian […] it should be observed as in the case preceding [sixty-three solidi]; 3. If a Frank robs a Roman […], he shall be liable to pay thirty solidi." Never mind the inequality. It is equally visible in the administration of wergilds. What is noteworthy here is, above all, the idiom used. When both the robber and his victim were Franks, no ethnic terms were necessary. The text simply states "he who" robs "a freeman" – only the amount of solidi to be paid (63) indicated the tribal affiliation of the victim. The ethnic affiliation of the robber and the victim was specified only when one was a Roman and the other a Frank. What is most telling, however, is the absence of a norm concerning the robbing of a Roman by another Roman. Just as it was among the Burgundians, apparently here, too, the principle was followed that issues among the Romans were settled according to a separate Roman law. Chlothar II's capitulary which pertained to Neustria laid down this principle with no ambiguity: *Inter Romanos negutia causarum romanis legebus praecepimus terminari*.[103]

The norms pertaining to the Romans were included in titles XIV, XLI and XLII of the Salic law by way of exception. They referred to issues and situations

103 CRF, vol. I, p. 19.

which the Roman lawmakers had not addressed but which, nonetheless, emerged as a result of social changes and urgently called for regulation. Apart from these exceptions, the norms of Salic law were formulated without specifying the ethnic affiliation of those to whom these norms pertained. The pronoun "someone" or the phrase "a freeman" were used. This man's tribal identity followed from the tribal character of the law. When we read that a killer whose fortune was too small to pay wergild must enter his house, collect a handful of earth, stand on the threshold facing the house's interior, and with his left hand throw this earth over his shoulders, and then, shirtless and barefoot with a stick in his hand, jump over his fence, we are unlikely to have any doubt that this is not a Roman aristocrat. *Lex Salica* describes this person with the bland pronoun "someone" as if it could relate to anyone. Indeed, it referred to anyone who lived by the tribal law of the Franks.[104]

We need to remember here that the demographic makeup in Merovingian Austrasia differed from that prevailing in the kingdoms of the Visigoths and the Burgundians. The Visigoths and the Burgundians were newcomers who lived dispersed among the local population. A substantial majority of the Franks continued to live in their tribal abodes east of the Rhine and north of the Somme where they constituted the core of the population. Only some of them settled in Neustria among the more numerous Gallo-Romans. In Burgundy and in Aquitaine, on the other hand, the Franks were few, although even there they retained their ethnic law.

Members of foreign tribes who settled among Austrasian Franks also retained their own laws. *Lex Ribuaria*, title XXXI, thus defines this principle: "This we decree: within the territory of the Ripuarians, whether Franks, Burgundians, Alamans or of whatever nation one dwells in, let one respond, when summoned to court, according to the law of the nation in which one was born." This very general norm was concretized in title XXXVI which specified the amount of wergild to which various newcomers were entitled. At the top of the list is a newcomer who was a Frank (*advena Francus*) with a wergild of 200 solidi, followed by an *advena Burgundio* (wergild of 160 solidi). Next on the list is *advena Romanus* (wergild of 100 solidi) with *advena Alamanus*, *advena Fresio*, *advena Bogius*, and *advena Saxo* at the end, each with a wergild of 160 solidi.

The words about the law in force in the newcomer's place of birth (*lex loci, ubi natus est*) have led some scholars to ascribe a solely territorial significance to the ethnic names appearing in titles XXXI and XXXVI of the Ripuarian law:

104 PLS, title LVIII.

a Burgundian would simply mean someone who came from Burgundy, a Bogius would be someone from Bavaria, etc. This interpretation, however, stumbles upon two obstacles. *Advena Francus* is one of them – not *Salicus*, which could, after all, refer to a territory – but precisely *Francus*. From the perspective of the Ripuarian Franks, this term signified a fellow tribesman who had come to the land on the Rhine from any other province of the kingdom. It is difficult to ascribe to the term *advena Francus* any precise region and to deprive it of an ethnic sense without stretching its meaning.

Advena Romanus poses a much more serious and probably insurmountable difficulty for the advocates of the territorial interpretation. He was not, after all, a newcomer from Rome. Fustel de Coulanges has tried to dispose of this problem assuming that the name "Roman" referred to an inhabitant of Aquitaine. A circumstance supporting this assumption was, in his view, the fact that Aquitaine was the only province of the state of the Franks that could not be assigned any of the tribal names listed in title XXXVI of the Ripuarian law. S. L. Guterman has rightly observed that it is a case of *petitio principi*. Let us add that not only Aquitaine but also Neustria lacks a tribal equivalent in title XXXVI, while the title mentions both the Frisians and the Saxons, who in the 7th century were still, from the Frankish point of view, foreigners.[105]

In the land of the Ripuarian Franks, a Roman newcomer had the same wergild as *Romanus possessor* in titles XLI and XLII of the Salic law. This is a very important circumstance, since wergild was an important index of an individual's affiliation to a specific social and legal group. Between 507 and 511, Clovis took Aquitaine from the Visigoths, that is, at the same time when the oldest edition of the Salic law was being prepared. We cannot assume that the terms *Romanus possessor* and *Romanus conviva regis* referred to the Aquitanians. These terms were used to describe free Gallo-Romans who were landholders or even royal courtiers. We are dealing with an ethnic and legal category. The same can be said about the term *advena Romanus* in the Ripuarian law. He was a free Roman who may have just as well have arrived from Aquitaine, Burgundy, or Neustria. Yet he certainly could not be a Frank coming from any of these provinces. *Advena Burgundio* was also an ethnic designation. Most probably, it referred to newcomers from Burgundy but not to all of them. His wergild was 160 solidi, so he was neither a Roman from Burgundy (wergild of 100 solidi) nor a local Frank (wergild of 200 solidi). He was a Burgundian.

105 Fustel de Coulanges, *Nouvelles recherches*, p. 379; Guterman, *The Principle of Personality*, p. 124f.

More or less a hundred years after the Ripuarian law was issued, King Pepin, father of Charles the Great, couched the principle of "personal law" in terms lifted straight from the Merovingian codification: "That all men, Romans as well as Salians, are to enjoy the use of their laws; and if a man arrives from another region he is to live according to the law of that territory" (*ut omnes hominess eorum legis habeant, tam Romani quam et Salici, et si de alia provincia advenerit, secundum legem ipsius patriae vivat*). Charles the Great approved this capitulary, ordering everyone to abide by these regulations.[106] Just as it was in the Salic and Ripuarian laws, *Romani* and *Salici* in Pepin's Capitulary do not refer to two different territories but to Romans and Franks living on the same land by different ethnic laws. They were conceptually set against the newcomers from other lands, and it is only to these newcomers that the words about the preservation of the laws that everyone had in their fatherland (*lex ipsius patriae*) refer. The principle of personal law was still observed in the country of the Franks under the reign of Charles the Great, and it was not undermined even after he became emperor.

Similarly to the Salic law, the subject of the legal norms in Rothari's edict was also defined with the pronoun "someone" or the phrase "a freeman." What reveals this man's ethnic identity, however, is both the epilogue in which the edict was described as a written account of the oral tradition "of our people," and the content of the particular norms. When we read that every freeman, before he marries a woman, must buy guardianship (the *mund* over his intended) from her father, brother, or any other *mundoald*, and give her *morgingap* the morning after the wedding, it is easily understood that "every freeman" refers to a Lombard and not a Roman. When, in his edicts, Liutprand referred to the norms written down in Rothari's edict, he frequently replaced the vague terms such as "someone" and "freeman" with the ethnic name *quis Langobardus* or with terms that signified a warrior (*exercitalis homo*, *herimannus*); it made no difference because every free Lombard was a warrior.

Considering all this, the leading Italian medievalists Giovanni Tabacco, Paolo Delogu, and Stefano Gasparri have unanimously seen Rothari's edict and Liutprand's codification as written codes of the personal, tribal law of the Lombards.[107] Recently, however, Gasparri and Delogu have modified their views in this matter.

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106 CRF, vol. I, 18, chapter 10, p. 43. The text of the capitulary is not dated. We know it only through Charles the Great's approval which is also not dated. The formula of approval (*incipient capitula, quas bone memorie genitor Pipinus sinodaliter constituit et nos ab omnibus conservare volumus*) indicates that it was in force in the entire country and not only in Aquitaine as A. Boretius supposed in his editorial introduction.

107 Tabacco, "Dai possessori;" Gasparri, "Strutture militari;" Delogu, "Il regno."

According to Gasparri, the mutual acculturation of the conquerors and the conquered, as well as the identification of all free landholders with the political community of the Lombard warriors, made the law of this community – theoretically still personal and tribal – acquire a territorial character during the reign of Liutprand.[108] Paolo Delogu, in turn, although convinced of the close affinity between the edict and the barbarian tradition and culture, has recently come up with the hypothesis that King Rothari had consciously intended to give his codification a territorial character by imposing the tribal law of the Lombards on the Roman population.[109] This would then amount not so much to a Romanization of the conquerors as to a legal barbarization of the conquered.

In the kingdom of the Lombards there was no official code of Roman law, something equivalent to *Lex Romana Visigothorum* or *Lex Romana Burgundionum*. Rothari's edict does not even mention the Romans. The ethnic mentality of the Lombards is also a rarity in the edict: it appears only in the solemn prologue and in exceptional situations when the introduction of new people to the ethnic and legal community is mentioned, or if for some other reason a need arises to differentiate between the members of this community and those of other tribes.

In chapter 367 of the edict, a special category of foreigners is mentioned: "All foreigners [or rather refugees – *waregang*] who come from outside our frontiers into the boundaries of our kingdom and yield to the jurisdiction of our power ought to live according to the Lombard laws, unless through our grace they have merited another law." Paolo Delogu juxtaposed this norm with Paul the Deacon's reference to the Saxons who, together with the Lombards, conquered Italy, but returned to the other side of the Alps when the Lombards did not allow them to live by Saxon law. On this basis, Delogu formulated the hypothesis that the Lombard conquerors attempted to impose their law on the Roman population as well.[110]

Both in chapter 367 of Rothari's edict and in Paul the Deacon's reference to the Saxons, we can indeed notice a tendency on the part of the members of other tribes to assimilate legally and ethnically. Both sources speak, however, not of Romans but of foreign warriors who had either accompanied the Lombards in their conquests (the Saxons) or had for some reason abandoned their native lands in order to find refuge under the banner and shield of the king of the Lombards

108 Gasparri, *Prima delle nazioni*, pp. 153 ff.

109 Delogu, "L'Editto."

110 Delogu, "L'Editto," p. 343; LL, Ro, chapter 367, p. 98 (regarding the meaning of the word *wara* – "agreement," "refuge," "care," hence *waregang* – see Frankovitch Onesti, *Vestigia*, p. 129f.).

(*waregang, qui se sub scuto potestatis nostrae subdiderunt*). The integration of these warriors with the Lombards was most probably in the interest of the monarchy, yet it seems unlikely we can say anything specific about the legal situation of the conquered population.

The ethnic idiom appears, moreover, in the norms of the edict which concern the manumission of slaves. This case, too, deals with the introduction of new people into the ethnic and legal community. In the eyes of the barbarians, slaves had no tribal affiliation or law, and they acquired both upon manumission. According to chapter 226 of Rothari's edict: "All freedmen who have obtained freedom from their Lombard lords ought to live according to the law of their lords and benefactors in the status which has been granted to them by their lords."

At a first glance, it might seem that there is a contradiction here. On one hand, there is a categorical order that a manumitted slave must live by the law of his or her former master (*omnes liberti* […] *legibus dominorum et benefacturibus suis vivere debeant*); on the other, there is the optional formulation that made the legal status of the manumitted slave dependent on the master's decision (*secundum qualiter a dominis suis propriis eis concessum fuerit*). Indeed, we are dealing here with two different norms but they concern two different issues.

In chapter 224 of the edict, three kinds of liberated slaves have been distinguished. We will leave aside for a moment those lowest among them – the *aldii* – and we will focus on those who were fully manumitted. They were divided into two categories. The freed slave who was not only made free by the master (*fulcfree*) but also independent of the master, that is, a stranger to him (*a se extraneum, id est amund*) belonged to the first one. In case of a childless death, the liberated *amund's* inheritance, as any free Lombard's, fell to the king. A liberated person whom the master made free (*fulcfree*) but not *amund* belonged to the other, lower, category. He possessed all attributes of the free condition, but he remained under the patronage of the former master regarding inheritance. The relationship with the patron was seen as one of artificial kinship: "… he [the former slave] shall live with his patron as with a brother or other related free Lombard." If such a liberated person died childless, the patron would inherit after him: "And if this one who was made *fulcfree* does not leave legitimate sons or daughters [when he dies], his patron shall succeed him."[111]

111 LL, Ro, chapter 64 (*talem legem patronus cum ipso vivat, tamquam si cum fratrem aut cum alio parente suo libero Langobardo*) and chapter 225 (*si* […] *heredes non derelinquerit aut se vivo non iudicaverit, patronus succedat sicut parenti suo*).

The description of a liberated slave under patronage as a free Lombard related to the former master seems a clear enough indication of the kind of ethnic law that he acquired upon liberation. Moreover, from chapter 225, which defines in detail the rules of inheritance from such a liberated slave, we learn that he could freely perform deeds of gift of his belongings that comprised household tools (*handegawerc*) and weapons (*harigawerc*); he was also allowed to acquire gifts for his military service to the duke or private men (*in gasindio ducis aut privatorum hominum obsequio*). There is no doubt, therefore, that the liberated slave, despite the master's patronage, was a free Lombard, lived by their law and was, like any other free Lombard, a warrior. The motive behind the liberation of slaves into the status of *fulcfree* but not *amund* could have been to strengthen of the military clientele of the patron.[112]

Whether a liberated slave was to be *amund* or to remain under patronage depended on the master's decision. The facultative formulation in chapter 226 refers to this decision: "All freedmen who have obtained freedom from their Lombard lords ought to live according to the law of their lords and benefactors in the status which has been granted to them by their lords." But whether the manumitted slave acquired the law of the Lombards did not depend on a free decision but on the ethnic and legal affiliation of the master. Here, the words of chapter 226 are categorical: *omnes liberti, qui a dominis suis langobardis libertatem meruerint*; they are to live by the law of their former masters. Upon manumission, they would become Lombards irrespective of whether they were *amund* or under patronage. The act of manumission was a kind of adoption, the introduction of a man who came from legal non-existence into the tribal community and, in the case of patronage, also into the kinship community of the master.

In chapter 226 of the edict, the use of the ethnic term *domini Langobardi* implies a differentiation between Lombard and other – most probably Roman – masters whose manumitted slaves did not acquire the law of the Lombards. Admittedly, Rothari's edict did not deal with the Romans or their manumitted slaves, but it seems that in such cases the principle of symmetry applied: as the master, so the man. In 769, when deacon Gratus, son of Simplicius, a Roman by birth and member of the clergy by title, manumitted several of his slaves in his will, it was written that "he made them free men and Roman citizens" (*instituit eos esse liberos civesque romanos*).[113] The words *cives romani* obviously did not imply here the citizenship of a no-longer existing empire, but belonging to the

112 Paul the Deacon suggests as much. See PDHL, I, 13, p. 28.

113 CDLS, vol. II, no. 231.

ethnic and legal category of free Romans. In the land of the Lombards, the liberated slaves of a Roman had to live by Roman law, just as the liberated slaves of a Lombard had to live, according to the norm of chapter 226 of the edict, by Lombard law. Rothari's edict dealt only with one part of this dualism; the other was intimated, constituting a logical implication of the formulations pertaining directly to the Lombards.

Chapter 204 of the edict is particularly telling in this respect: "No free woman who lives according to the law of the Lombards within the jurisdiction of our realm is permitted to live under her own guardianship, that is, to be legally competent (*selpmundia*), but she ought always to remain under the control of some man or of the king. Nor may a woman have the right to give away or alienate any of her movable or immovable property without the consent of him who possesses her mundium" (*Nulli mulieri liberae sub regni nostri ditionem legis langobardorum viventem liceat in sui potestatem arbitrium, id est selbmundia vivere, nisi semper sub potestatem virorum, aut certe regis debeat permanere; nec aliquid de res mobiles aut inmobiles sine voluntate ipsius, in cuius mundium fuerit, habeat potestatem donandi aut alienandi*).

Ditio regni nostri refers in this text to the territory of the kingdom and the jurisdiction of the king ruling over all free people of this territory. But the norm of chapter 204 refers only to those women who live according to Lombard law. These words have a differentiating function. What they implicitly suggest is that from among the free men and women remaining *sub regni nostri ditionem*, that is, under the judicial authority and protection of the king, some lived according to the Lombard law while others did not. Within the territory of the kingdom, two ethnic laws, both under the territorial structures of the royal jurisdiction, existed side by side.

In chapter 204 cited above, the categorical order that the woman should remain under the control (*mundium*) of male relatives or the king related only to women living according to the law of the Lombards. On the other hand, although we know that among other Germanic peoples a woman without *mundium* was unimaginable, or at least unacceptable, Rothari did not have to deal with other Germanic peoples in his edict. What follows from chapter 204 of the edict, however, is that there were, apart from the female Lombards to whom the chapter pertains, also those free women who were allowed by their ethnic law to live "under their own guardianship" (*selpmundia*) in Rothari's kingdom. The conclusion that these women were Roman finds an unambiguous confirmation in Liutprand's edict.

The law of the Lombards required that the fiancé should buy his fiancée's *mund* from her male guardians before the wedding. It was tantamount to consent to the marriage on the part of the previous holders of the *mund*, and it was

also a condition of the ritual transfer of the woman from hand to hand (*traditio per manus*). According to chapter 188 of Rothari's edict, a man who married a woman without fulfilling these conditions, that is, without the consent of her male relatives, had to pay them, apart from the price of *mund*, twenty solidi as compensation for the indecent deed (*anagrip*) and another twenty solidi to avert *faida*, or feud (*et propter faida alios viginti*). When the woman was a widow, the *mund* and any resultant claims belonged to the heirs of the deceased husband, that is, firstly, to the sons.

Chapter 127 of Liutprand's edicts was, as can be judged by the details it contains, a written account of a royal verdict. In his judicial practice the ruler must have encountered a claim regarding *mund* from the sons of a Lombard woman and a Roman man. When the mother was widowed and married again without asking their permission, the sons demanded twenty solidi for *anagrip* and twenty to avoid *faida* from the mother's second husband. The king waived the claim, but because the case itself and its settlement seemed especially important, he made the justification of his verdict into a legal norm in the edict of 731: "If a Roman man marries a Lombard woman and acquires her *mundium*, and if after his death the widow marries another man without the consent of the heirs of her first husband, feud and penalty for illegal intercourse shall not be required; for after she married a Roman man and he acquired her *mundium*, she became a Roman and the children born of such marriage shall be Roman and shall live according to the law of their Roman father. Therefore the man who marries her after the death of her first husband ought not to pay composition for illegal intercourse just as he would not pay it for another Roman woman."[114]

The premise of this reasoning is clear: according to the law of the Romans, a widow is legally competent, *selpmundia*. She marries of her own free will whomever she wants. No one holds the *mund* over her, so there is no encroaching on the *mundoald* rights, which means that the claim to the payment of *faida* and *anagrip* is groundless. Liutprand applied a general norm from chapter 204 of Rothari's edict to the particular case of a mixed marriage and, along the way, explicitly formulated what Rothari tacitly assumed. Both poles of the legal dualism come into full view. Rothari's edict, read in such terms, also testifies to the coexistence of two major and distinct legal and ethnic communities within the kingdom: the Lombards and the Romans.

In Liutprand's codification we can see special care about the preservation of this dualism. Given the fact that more and more exchange, purchase-and-sale,

114 LL, Li, chapter 127, p. 192.

or deed of gift transactions were authenticated by written documents, the king added a special chapter to his edict of 727: "In the case of the scribes we decree that those who prepare charters should write them either according to the law of the Lombards – which is well known to be open to all – or according to that of the Romans; they shall not do otherwise than is contained in these laws and they shall not write contrary to the law of the Lombards or of the Romans. If they do not know how to do this, let them ask others, and if they cannot know such laws fully, they should not write such charters. He who presumes to do otherwise shall pay his wergild as composition, except in that case where everything is agreed upon among fellow freemen. For if men wish to go outside the law and make a pact or agreement among themselves, and both parties consent, this shall not be regarded as contrary to law since both parties have done it voluntarily, and those who write such charters shall not be found liable to blame. However, anything that pertains to inheritance must be written according to law."[115]

The text seems clear enough and calls, perhaps, for only a few words of comment. The Lombards and the Romans are free people here (*conliberti*, which does not mean emancipated slaves but fully free partners); both have or can have some kind of property to which the conducted transactions relate; both have their own distinct ethnic law. But the law of the Lombards is "well known to be open to all" (*lex apertissima et pene omnibus nota*). One could not say the same thing about the law of the Romans, the knowledge and understanding of which apparently posed more problems.

We can guess at least two reasons why *Lex Romanorum* was, in the king's view, less known and aroused more doubt than *Lex Langobardorum*. First, the law of the Lombards existed in the form of official written codifications, while an official and widely distributed compilation of Roman law did not exist in Lombard Italy. In case of doubt about the law of the Lombards, a scribe could draw from a copy of the edicts, but when it came to the law of the Romans, one could only "ask others," which meant, draw on the oral tradition. *Lex Romanorum* acquired the characteristics of customary law, which allowed it to adapt to social changes without being legislated. Second, both in Rothari's and Liutprand's times, the monarchy was a commonwealth of Lombard warriors who were the only "source of sovereignty"[116] and held a monopoly on wielding power in worldly matters. The considerable political inequality between the Lombards and the Romans had profound consequences in terms of their actual financial and social standing.

115 LL, Li, chapter 91, pp. 172–174.

116 Delogu, *Longobardi e Romani*, p. 125.

Many humble warriors lived by the law of the Lombards, but it was also the law of nearly all wealthy and influential lay people.

The clergy, irrespective of origin, lived by the law of the Romans. Stefano Gasparri has rightly noted that as the Lombards shifted from Arianism to Catholicism and the Church became stronger, so increased the prestige of Roman law as the law of the clergy.[117] In chapter 153, the last of his edicts, King Liutprand stipulated: "If a Lombard is married and has sons or daughters, and if afterwards, compelled by divine guidance, he becomes a priest, then the sons or daughters who were born before his consecration shall live by that law as their father lived when he begot them, and they ought to settle their lawsuits according to this law." The idea was to prevent the sons from taking advantage of their fathers' priesthood by exchanging Lombard law for Roman law in order to evade military service.

In the times of Liutprand's reign, the Lombards and the Romans were no longer divided by language or religion. Their nearly 150 years of co-existence and mutual acculturation must have brought the two communities closer. In the 8th century, they were divided not so much by ethnic differences as by differences in social roles and legal segregation. The three norms that were issued by Liutprand addressing this segregation concern three different situations yet share something in common; in chapter 91, as well as in chapters 127 and 153 of his edicts, the king reacted with a more or less categorical ban on any attempts to transgress the legal boundaries separating the Lombards from the Romans.

Both social behavior and the restrictive stance of royal power are noteworthy here. The sons of the Roman man and Lombard woman who were mentioned in chapter 127 could not have thought that the communities were divided by an unbridgeable gulf. After all, they had Lombard uncles. Demanding 40 *solidi* from the mother's second husband, they may have been motivated by greed. But the king went further than dismissing their claims in court. He added the justification of his verdict to the edict. Apparently, these claims were in Liutprand's eyes not only groundless, but they also threatened the systemic principle of the state: here the Romans were usurping Lombard law. The king could not agree to this.

When it comes to the scribes and the written attestation of property transactions between Lombards and Romans (chapter 91), Liutprand seemed less categorical. He did declare that the scribe had to know both codes of law and follow them when drawing up the document, but he allowed for concessions if both parties agreed to them. There was, however, one major exception: no departure

117 Gasparri, *Prima delle nazioni*, p. 152f.

from the norms of the ethnic inheritance law. Whoever broke that norm would have to pay what his life was worth to the royal treasury. This was one of the highest financial penalties and was imposed on those offenders who were guilty of lese-majesty and violated the principles of social order.

The behavior of the sons of priests who took advantage of their fathers' priesthood so that they could, together with the honor of Lombard identity, cast off the burden of military service (chapter 153) can be seen as a sign of the times, a testimony to cultural transformation. In this case, it is rather easy to understand the king's reasons for the ban. It is not possible, however, to reduce the 8th century law of the Romans to the state law of the clergy. Chapters 91 and 127 speak of lay Romans. The king insisted that their sons live and inherit according to the law of the Romans.

It seems that in defending ethnic and legal segregation, the royal powers attempted to defy the processes of integration. We shall later return to the causes of royal conservatism. For the time being, we can sum up the overview of the sources on so-called personal law. There is no consensus on this issue among scholars. In my view, however, the sources allow us to claim that the principle of the legal distinction of Lombards and Romans in the 7th and 8th centuries remained a binding systemic canon of the Lombard state. The principle of the ethnic and legal segregation of the Franks, Burgundians, and Gallo-Romans under Merovingian and Carolingian rule enjoyed an equally long life. In Visigoth Spain, Receswind's codification came to be binding in 654 for both the Goths and the Romans, yet until that year a dualism was in force in the kingdom: *Codex Euricianus* for the former and *Lex Romana Visigothorum* for the latter. *Lex Salica* and *Lex Ribuaria*, the Lombard kings' edicts, the Burgundian *Liber constitutionum*, and *Codex Euricianus*, preserved only in fragments, were all written down for fellow tribesmen, and not for the Romans. We can, therefore, undertake an attempt to trace an account of the tribal legal tradition within these sources. The personal and ethnic character of the barbarian laws is a necessary but not sufficient condition for the success of this undertaking.

4. Between Tribal Tradition and the Pressure of Civilization

The codifications of customary laws can at times be treated as sources of knowledge about tribal political systems, but they are always evidence *ex post* born of systemic transformation. Moreover, the reconstruction of the social system proceeded along different paths for different nations, which obviously exerted a differentiating influence on the shape of the codifications. On the territories of the former Roman empire, the relations between the victorious barbarians and the

local community played a crucial role. The fact that the barbarians retained their own laws there does not mean, however, that co-existence with the local population did not have a significant impact on both their social and cultural situation and the legal norms. The position of the Roman elites in the kingdoms of the Franks, the Burgundians, the Visigoths, and the Lombards took various forms and the influence of the Roman models on Clovis's, Gundobad's, Sigismund's, Euric's, or Rothari's codifications was highly uneven.

Relying on a comparative analysis of Rothari's edict and the Visigothic *Liber iudiciorum*, Paolo Delogu rightly sees two extremely dissimilar normative systems in these simultaneously codified laws. Similarly to the rulers of the late empire, the Visigoths played the role of the guarantor of social order and in this role meted out death, mutilation, flogging, confiscation, or fines as penalties for a variety of crimes. With the Lombards, however, the state did not mete out the death penalty or corporal punishment. There were two exceptions to this: crimes against the king and the safety of the monarchy. Blood feud (*faida*, *inimicitia*) between hostile blood-groups which could lead to vendetta played a key role here. In Lombard law, punishment amounted to private composition paid to the victims by way of redress for the wrong and to avoid revenge. The crime violated internal peace. The royal authority stepped in not to punish the culprit but to restore peace by assuring that the revenge was bought off and the parties reconciled. When the king himself was offended by the violation of the peace, a fine was collected for the royal treasury, but even this fine was in fact compensatory in nature and put an end to the public feud against the offender.

In matters concerning inheritance, marriage, and family, the Visigothic codifications upheld individualism; they protected the individual rights of the spouses, adult children, and women, treated the kinship-group as an assemblage of individuals, and respected, above all, the interest of the individual. For the Lombards, by contrast, it was the kinship group, its common property interests and its control over each of its members, that was of highest value. This was linked with the supremacy of the male head of the family and, particularly, the strict male guardianship (*mund*) over women and children. The individual was subjected to the group.

We are indeed dealing here with a stark contrast. What made Rothari's edict different from the Visigothic codification was its essentially disparate value system, or, in other words, a cultural difference. Paolo Delogu identified Roman provincial models of social order in the framework of the law of the Visigoths. The provincial structures in Aquitaine and Spain survived the barbarian conquests, which led to a thorough Romanization of the Goths. In Italy, on the other hand, the Roman legal order did not survive the invasion of the Lombards: "Other customs took its place. They were of an essentially different character and origin and they referred

to a legal culture and social order based on entirely different [from Roman – K.M.] principles."[118] If I may clarify this a little, Delogu speaks of the principles of the barbarian legal culture that derive from the tribal political system. The values and concepts we find in Rothari's edict that are related to the legal identity of the people and the army, the position of the king within the warrior community, and the bond linking the ruler to all free fellow tribesmen seem to share an affinity with this archetype.

There is nothing to suggest that the basic structures of Roman statehood in Spain were entirely different from those in Italy. There is no reason, either, to assume that the tribal political systems of the Goths and the Lombards differed radically before these people entered the Empire's territories. The profound difference between *Liber iudiciorum* and Rothari's edict should be ascribed to the dissimilar circumstances under which the Goths and the Lombards built their states on these territories.

The Goths, similarly to the Burgundians, settled there having the status of confederates (*foederati*) of the empire, which undoubtedly made their relationships with the local elites easier. Yet, in order for the barbarians to adjust to the rules of the Roman state, this state had to exist and function. In Aquitaine, Spain, and, above all, in Italy itself during the 5th century and the first decades of the 6th, some basic structures of Roman statehood did indeed still exist. The removal of Romulus Augustulus by Odoacer changed nothing in this respect. The official correspondence carried out by Cassiodorus on behalf of Theoderic the Great and his successors leaves no doubt that the Roman tax system functioned quite effectively under the rule of the Ostrogothic kings and to the benefit of their monarchy. The case must have been more or less similar in the kingdoms of the Visigoths and Burgundians.

It was Cassiodorus, a prominent representative of the Roman senatorial aristocracy and not a Goth, who was the prefect of the pretorium under the rule of Theoderic. The barbarians were incapable of directly running the mechanisms of civil administration. In order to keep these mechanisms going and to control the occupied land and reap profits from the imperial fiscal system, the barbarians needed the cooperation of the Roman ruling groups. The condominium of the senatorial and bureaucratic elite with the rulers of the German army was shaped by their mutual interest. This arrangement of relations led to the rapid and profound Romanization of the barbarian culture.

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118 Delogu, "L'Editto," pp. 339 and 342; for a comparative analysis of Rothari's edict and the Visigothic codification, see Delogu, pp. 331–338.

All of this was not Walter Goffart's discovery but a view which has been held for quite some time in the literature on the topic.[119] Regarding Ostrogothic Italy, one finds solid support for this view in the sources. On this basis, or in fact, going far beyond it, Goffart has built a universal model of transition from the Roman empire to barbarian monarchies without upsetting the continuity of the political system. The author of the model also included the Lombard rule in it.

There is no mention of any land tax or poll tax in Rothari's edict nor in the edicts of Liutprand, Ratchis, and Aistulf. Nor is there any such mention in the documents of the 8th century or the sources of the era of Carolingian rule in Italy. What is particularly authoritative here is the absence of anything resembling *iugatio-capitatio* in immunity exemptions from public dues. There are only references to various market fees and customs duties.

Goffart contrasted the negative evidence of the sources of the period with a rather bold interpretation of two brief references made by Paul the Deacon. The first relates to the years of interregnum (574–584), when "many of the noble Romans were killed from the love of gain, and the remainder were divided among their 'guests' and made tributaries, that they should pay the third part of their products to the Langobards." The second reference tells us that after Authari was put on the throne in 584, the local Lombard rulers gave half of their possessions to the newly restored royal power, while "the oppressed people, however, were parceled out among the Langobard guests."[120]

Paul the Deacon wrote of these events two hundred years after they took place. He did have, admittedly, the lost chronicle of Secundus of Non (d. 612), but we do not know how he understood and made use of the testimony of his predecessor. Moreover, it does not seem that Paul the Deacon is referring to Roman taxes here. Such an interpretation of the passage about the noble Romans paying one-third of their harvest to the Lombards (*tertiam partem eorum frugum*) or about the people burdened with a variety of services (*populi adgravati*) that the "Langobard guests" shared among themselves is beyond arbitrary. We are more likely to detect here a vestige of the practice of *hospitaticum* from late antiquity, that is, the assignment of one-third of land property for the needs of the barbarian allies of the Empire (the "guests"). The Lombards, however, did not come to Italy as allies, and even if they initially attempted to introduce the practice of *hospitaticum*, they soon changed their conduct. There is not a single trace of reference to *hospitaticum*

119 This has been the case even in textbook approaches; see, *Storia d'Italia Einaudi*, vol. II, 1, Tabacco's text; see also Modzelewski, "Społeczeństwo i gospodarka," pp. 166–178 and Modzelewski, *La transizione*.

120 PDHL, II, 32 and III, 16.

in Rothari's edict, while the laws of the Burgundians and the Visigoths contain detailed regulations concerning the use of part of the land belonging to Romans by the barbarian "guests."[121]

Attempts to extend Goffart's and Durliat's model to Lombard Italy have met with severe yet deserved criticism.[122] The Roman tax system did not survive on the territories conquered by the Lombards. It disappeared together with the breakup of the administrative structures of the Roman state. The region lacked a social force capable of keeping the mechanisms of civil administration running; they lacked "the famous men" (*viri clarissimi*) of the Empire, the highest senatorial and bureaucratic elite.[123] When Agilulf, Authari's successor to the Lombard throne, needed to send a Roman of high social standing to conduct talks in Constantinople, he was unable to find anyone in his vicinity more eminent than the notary Stabilicianus.

What happened to "the famous men"? Pope Gregory I depicts the Lombards as the most savage of the barbarian peoples. Paul the Deacon mentions rapes committed during the time of the interregnum and of making the Roman nobility vassals.[124] After 568, many a bishopric was left for decades without a priest. Yet, was all this the cause or the effect of the fact that Alboin did not have a Cassiodorus of his own? Where were the likes of Cassiodorus in the times of Alboin and Cleph?

Perhaps they simply were where Cassiodorus himself and those like him were at the time of the arrival of the Goths – either in Rome or in Ravenna. Under the rule of the Goths and after the Byzantine re-conquest, the aristocracy and imperial bureaucracy were concentrated, just as before, in those two cities. The Lombards did not conquer Rome or Ravenna; they only conquered a part of the country. They became, if I may put it this way, the lords of Italy "county." The residential capitals of the senatorial state and the highest bureaucracy remained in the hands of Byzantium. Amidst the discussion of whether the Roman aristocracy was exterminated, exiled, or degraded under Lombard rule, it is worthwhile to note a less dramatic yet probable option: they were absent.

Friul, Trento, Arezzo, and even Pavia had never been centers of senatorial families. Alboin did not have a Cassiodorus of his own because the potential candidates remained outside the cordon. On the conquered territories, the Lombards had

121 LC, titles XIII and LV; LVisig., 10, 1, 8.

122 Wickham, "The Other Transition;" Delogu, *Longobardi e Romani*, p. 116; Gasparri, "Il regno e la legge." p. 247f., note 6; Cesa, "Hospitalitas o altre 'techniques of accomodation'?"

123 Gasparri, *Prima delle nazioni*, p. 143.

124 II, 31 and 32.

only municipal notables (*curiales*) to deal with, from whom only the influential and experienced *viri clarissimi* and not the barbarian newcomers could exact administrative duties. In Pavia, Alboin could not find any Romans of sufficiently high standing who were competent of running, as they had been doing for ages, the mechanisms of civil administration and the imperial fiscal system. The conquerors could not expect any benefits apart from the abandoned properties which they had taken from the senators of Rome and the dignitaries of Ravenna as trophy.

So when the time of looting and spoils was over, and they had to set about building the state, the Lombards had to do it themselves. They had land, but they had no fiscal revenue for the army. Therefore, they had to base the organization of military forces on a general levy collected from free fellow tribesmen, on the traditional bonds and values that made the organization coherent, and on the conviction that the people-army were bound by blood affinity to the king and the rulers (*duces*). They had no administration or support from *municipia*, so they had to treat their state as a political commonwealth of Lombard warriors walled off from the local population and constituting the only source of sovereignty. The legal tradition of the barbarian people was the ideological and political foundation of the monarchy. This allows us to understand why the royal codifications of the law of the Lombards so steadfastly and stubbornly clung to the tribal archetype.

The Visigoths and the Burgundians were on the opposite pole. The political system of their states was based on the condominium of the Roman and barbarian elites. *Liber constitutionum* stipulated identical composition for injuries for both the Burgundian optimates and Gallo-Roman aristocrats. This is a telling norm, because the amount of composition and wergild were, in the Germans' understanding, an index of "the quality [i.e., status] of the person."[125] The Burgundian elite, whose views were reflected in the royal codification, placed the Roman and Burgundian elites on equal footing. In the Visigothic kingdom, too, the local senatorial dynasties retained their political position, exacting the duties of the *municipia* in the sphere of the judiciary and tax collection.

In 507, the Franks dislodged the Visigoths from most of Aquitaine and in 543 they conquered the kingdom of the Burgundians. The Merovingians thus became lords of the territories on which the Roman elites had held social hegemony and ensured the functioning of the Roman administrative structures. Under the Frankish authority, the local aristocracy retained important church and administrative

125 LC, title II, 2. On how the wergild was diversified among the Lombards, *in angargathungi, id est secundum qualitatem personae*, see chapter 5 of this book.

positions.[126] This should not lead, however, to hasty generalizations. When the Frankish state included only Austrasia and Neustria, some Romans indeed held some positions at the royal court which entitled them to a triple wergild, yet it was always half as high as the wergild which protected a Frank holding an analogous position "or any other barbarian living by the Salic law."[127] A Roman aristocrat was of a significantly lesser quality than a German warrior.

Gregory of Tours provides some credible information about tax collection in the 6th century, which was evidently considered an obligation pursuant to imperial ordinances since tax exemptions granted by Leo I of the Eastern Empire were respected. The events recounted by Gregory also point to the significant role of cities in the process of tax collection. All this relates, however, to Aquitaine. The Roman tax system also functioned more or less efficiently in Burgundy. Yet we do not know what remained of it in Neustria, and there is no way to suppose that the system also stretched to Frankish Austrasia. Even in Aquitaine, attempts to impose taxes on the few immigrant Franks met with the violent reaction of those concerned.[128] The transfer of the model of the Roman fiscal system to the tribal den of the Franks would also have stood no chance of success because there were no cities and municipal curias. The public tribute, referred to as *steura*, *stuofa* or *osterstuofa*, that was collected on the German territories of the Carolingian Franks seems more similar to the Russian *dan* (tribute), the Bohemian *dan miru* (tribute of peace), or the ox tax (*powołowe*) and coulter tax (*poradlne*) of Piast dynasty Poland than to the Roman *iugatio-capitatio*.[129]

The Frankish state was a diversified formation in terms of its political systems and cultures, and any attempts to reduce its diversity are bound to lead us astray. Karl Ferdinand Werner has argued convincingly that Clovis's kingdom was not a product of the "migration of a people."[130] Although Clovis seized power over northern Gaul and conquered Aquitaine, and his successor also conquered Burgundy, a great majority of the Franks remained on their own tribal territory. This territory, Austrasia, is where the main military supply base of Clovis and his successors was located, where the roots of royal power were to be found, and where the legal tradition codified in the Pact of the Salic law originated. What contributed to the decision to codify this law was probably the need to ensure the legal distinction of those Franks who settled in Neustria among the Gallo-Romans.

126 Strohecker, *Der senatorische Adel*; Wood, *The Merovingian Kingdoms*, p. 100f.
127 Title XLI, 1, 3, 5 and 6.
128 GTFH, III, 36 and VII, 15; see also IX, 30.
129 On *steura* and *ostarstoufa*, see chapter 5 and the epilogue of this book.
130 Werner, "La conquête," passim.

What is significant, however, is that the decision for codification was ascribed in the short prologue to the Pact to all the Franks and not the king, whose name was not even mentioned. Instead, the four names of the law speakers were given together with the names of their villages "beyond the Rhine." Whatever we might think about the "historical reliability" of the short prologue, there are no superfluous words there or incidental information without ideological content. The claim that the Pact of the Salic law was a written record of the tradition proclaimed at assemblies by experts "from the other [that is, the eastern] side of the Rhine" served to legitimize it: here was the law of the ancestors codified in the fatherland.[131]

This law was codified in Latin, but words, formulas, and even entire sentences woven into the text and spoken in court leave no doubt as to the language in which litigation was conducted and verdicts pronounced, and to the ethnic identity of those who gathered to hear judgement passed.

5. Foreign Script, Native Speech

The legal tradition of the barbarian peoples was usually written down on the initiative of the royal court with clergymen acting as the scribes. The language of codification was the official language used when drawing up royal and church writings. Only in the north and on the eastern borderland of barbarian Europe – among the Anglo-Saxons, Scandinavians, and in Rus' – were native languages used for official function. Everywhere else, Latin reigned supreme. It was, however, Latin of a very diverse quality, ranging from the relatively correct form in the laws of the Visigoths and the Burgundians to the deeply barbarized and Germanic-interjection speckled Latin of Rothari's edict or the Pact of the Salic law. These differences are telling. Where civilization did not manage to stifle traditional culture, Latin often failed in communication across ethnic communities and was insufficient to faithfully record the norms of tribal law. Even the Burgundian *Liber constitutionum*, despite evident signs of cultural Romanization, at times made use of Germanic terms to describe their own institutions (e.g., *wittimon* – an equivalent to *mund*; or *morgengabe* – the morning gift).

However, the Pact of the Salic law is in this respect a unique source, since it contains not only numerous Germanic terms but also judicial formulas written in the Franks' mother tongue and known by historians and linguists as the Malberg glosses. In the text of the Salic law, they are preceded by a characteristic

131 Schmidt-Wiegand, "Das fränkische Wortgut," p. 281.

announcement: *mallobergo*, that is, "judicially speaking," "as they say at the assembly," or "in the language of the assembly square."

Let us recall that the term *mallus*, deriving from the German word *mahla* (speak), meant a judicial assembly convened by a *thunginus*, while a group of seven *rachinburgi* "spoke the law," that is, formulated, and pronounced verdicts. The noun *mallobergus* (literally: a hill of speech, a hill of court) meant the specific site where the judicial assembly took place (*rachineburgii in mallobergo sedentes*) as well as the specific day on which it was held.[132] The adverb *mallobergo* recalled these notions, heralding a quotation in the language used at the judicial assembly. An announcement like this was followed by formulas written in Frankish dialect. They were expressions or single words – signaling keywords which, by naming a particular offense, helped to identify the type of crime. This is what the administration of law was about. It meant "speaking the Salic law." It is possible that these same formulas when combined with negation constituted an essential element of an oath by means of which the accused could clear his name.[133]

The Malberg glosses were, therefore, a written record of the short sentences of the verdicts spoken at the judicial assembly in an oral form defined by ritual. Some of them feature alliteration which was used among the Germanic peoples to preserve word-for-word the most important elements of the oral tradition. Title XXVI of the Salic law can serve as an example:

"1. The freeman who sets free with a denarius before the king without the consent of his lord another man's *letus* [a slave who has been freed, but is still under the patronage of his former master – KM] […] and it is proved against him […]" At this point the Latin text breaks and the announcement *mallobergo* appears followed by the formula: *maltho thi afrio, letu!* ("I say: half-free man, be free!"). Paragraph 2 is constructed analogically: "He who sets free with a denarius before the king another man's slave, and it is proved against him […]" At this point, the word *mallobergo* appears again followed by the words: *maltho thi atomeo, theo!* ("I say: Slave, be free!").[134] Both formulas are appealing to the ear and simple to remember thanks to alliteration. This is not an accident. To say these words and throw a denarius (coin) before the king comprised the binding ritual without which the act of manumission had no legal force. Each word was important here and had to be said in proper order. Yet in title XXVI, the words uttered during the act of manumission signify the name of the crime, that is, the

132 PLS, titles XLIV, XLVI, L, LIV and LVII.

133 F. Bayerle has expressed such a view which was cited by Schmidt-Wiegand, "Malbergische Glosse als Denkmal," p. 396 and note 2.

134 PLS, XXVI, 1 and 2; see also, Schmidt-Wiegand, "Zur Geschichte," p. 227.

irreversible (because of the binding power of ritual) liberation of a half-free man or a slave without the consent or knowledge of his lord. The crux of this crime was described in detail and clearly enough in Latin directly before the Malberg gloss. The Germanic insertion placed after this description was neither a translation nor explanation of the Latin text. It lived a life of its own.

It was, as Ruth Schmidt-Wiegand has noted, a rule in the so-called Malberg glosses; syntactically they were not related to the context. In the written law, these glosses were a foreign element not only because of the foreignness of the ethnic language, but even more so because culturally they constituted fragments of a different system of signs – that is, traditional spoken law. There is no doubt that the inclusion of these fragments in the Pact of the Salic law was intended to ease cross-cultural communication. This general truth, however, should not satisfy us. For whose use were they intended, and why was their original wording necessary? This is a question of paramount importance that cannot be answered in a single breath. We shall have to approach it step by step.

Let us begin with the obvious. The wording of the Malberg glosses and the word *mallobergo* that gave them the name demonstrate that the language of the judicial assembly in the Salic law was the Germanic dialect of the Franks. This language was used for charges, verdicts, oaths that cleared one's name, summons, and obligations. It was necessary to say the appropriate formulas in the Frankish language even to exact claims of debt. Thus, the creditor had to state to the *thunginus* who convened the assembly: "I ask you, judge (*thungine*), that you summon to court (*nestigan thigius*) my adversary (*gasachio*) who gave me his promise and owes me a legitimate debt." The *thunginus*, on his part, had to use the same expression: "*Nestigan thigio* (I solemnly oblige) this man to do that which Salic law says."[135]

An inevitable conclusion emerges here. The Salic law speaks of disputes, assemblies, and courts within a linguistically homogenous community. It is not only about the principle of the ethnic personality of law, according to which members of other tribes were not taken into consideration even if they were more numerous than the natives. It is about the social context in which the Frankish institutions functioned. The *thunginus* was not a royal servant, but a head of a local community of the assembly and the court.[136] He was at the head of a small community organized around its own *malloberg* and taking up a territorial unit of a relatively modest size similar to the Allemanni *centena*.[137] Each of these communities had

135 PLS, title L, pp. 189 ff.; Schmidt-Wiegand, *Nexti cantichio*, HRG III, column 963f.
136 Weitzel, *Dinggenossenschaft*, pp. 435–446.
137 PLS, titles XLIV and XLVI; see also chapter VI of this book.

its own body of *rachinburgi* and a much greater number of assembly participants living in the vicinity. Communities thus organized were not found in Aquitaine or even Neustria, where the Frankish minority lived amongst the more numerous Gallo-Roman populations. The norms of the Salic law that concern the political system of the judicial assembly resemble a spectacle, the action of which takes place in the fatherland of the Franks beyond the Rhine, from where, according to the short prologue, Wisogast, Salegast, Arogast and Widogast had come.

At first glance, this conclusion could be contradicted by title XLVII of the Salic law. It defines the ways of making claims for horses, cows, etc., stolen by unknown thieves which the owner recognized in the hands of a person living in a different neighborhood. What had to be established by the court was who had stolen the goods and who unsuspectingly bought the stolen possessions in good faith. All this had to be determined by the local court on the territory of the community of the man who was recognized to be in possession of the stolen property (*ista omnia in illo mallo debent fieri, ubi est gamallus super quem res illa primitus fuit agnita*). Both parties, together with any witnesses, were summoned, and whoever failed to come without a valid excuse was considered to be the thief. The term for appearance varied, however. It was forty days if both the owner whose property had been stolen and the man recognized to be in possession of the stolen goods lived "between the Loire River and the Carbonaria Forest" (*si cis Ligere aut Carbonarium ambo manent*), that is, in Neustria. If only the victim lived there, and he recognized the stolen cows and horses to be in possession of a person living in Aquitaine or Austrasia, the term was twice as long.

These court terms were thus defined here from the perspective of the inhabitants of Neustria. One can presume that a similar extension of the term for bringing claims was also granted to the inhabitants of Austrasia and Aquitaine if the stolen property was recognized in another province, though title XLVII does not mention such cases. Drawing on these facts, some scholars have argued that the Salic law reflected the relationships that existed in Neustria, and that it was meant precisely for Neustria. Franz Beyerle, the seasoned expert of Germanic laws, was not inclined to make such generalizations. In his view, what we have in title XLVII is a supplement which was most probably added to the original by Chilperic I (561–584).[138] But the king of a province could have been the author of only the passages relating to deadlines because, apart from this detail, title XLVII stipulated the same kind of procedure for the making of claims for Austrasia, Neustria, and Aquitaine. This was thus an all-Frankish norm, a product of a codification

138 Beyerle, *Die Lex Ribuaria*. pp. 333 ff.

that covered Clovis's entire kingdom and not just one of its regions. Title XLVII does not give grounds for supposing that the customs and relations of the Frankish minority that had only recently settled in Neustria were the prototype for this codification.[139]

The linguists Wolfgang Jungandreas and Rudolf Schützeichel, however, succumbed to this suggestion.[140] Assuming Neustria to be the main territory on which the Salic law was binding, they searched for traces of the Old Frankish vocabulary of the Malberg glosses in the place names of this territory and in the Old French lexical reservoir. They easily found what they were looking for precisely where they were looking for it. There is no doubt that the Germanic contribution to the French vocabulary and names of places in the region came mostly from the Franks, whose mother tongue can be read in the Malberg glosses. This does not mean, however, that the language of the Franks came into being at the end of the 5th century in northern Gaul and was not transported there by the Frankish newcomers from their tribal fatherland.

Thanks to the research of Ruth Schmidt-Wiegand, we can consider this problem solved. She made no assumptions as to the territory on which an alleged western Frankish dialect was to come into being and then blend into Old French. On the contrary, she noted the citation in title XLI referring to a "Frank or other barbarian who lives by Salic law" and took into account the complex character of tribal ethnogenesis and allowed for the possibility of the mutual influence of various Germanic dialects in the vocabulary of the *malloberg*. This approach contributed significantly to the broadening of comparative studies. Schmidt-Wiegand has established relations between Germanic expressions of the Salic law and vocabulary characteristic of the medieval dialects of the Rhineland, Franconia, Westphalia, and Friesland. "The language of assembly square," in which the editors of the Pact of the Salic law wrote short sentences spoken by the *rachinburgi* at the court, originated at the intersection of encounters among the Franks, Saxons, and Frisians.[141] The outcome of this historical and linguistic analysis seems to

139 Wood (*The Merovingian Kingdoms*, pp. 111–119) has noted information about the alterations of the Salic law by subsequent rulers, but he concludes that initially it was binding in Clovis's entire country, and that only from the second half of the 7th century had it been considered to be the law of the Nuestrian Franks; *Lex Ribuaria*, on the other hand, was binding for the Austrasian Franks.

140 Jungandreas, "Vom Merowingischen;" Schützeichel, p. 619f.

141 Schmidt-Wiegand, "Das fränkische Wortgut," pp. 281–290; "Malbergische Glossen als Denkmal," pp. 402–407; "Rechtssprache," p. 169; see also von Olberg, *Freie*, pp. 20 and 140.

corroborate the information found in the *Short Prologue* that *Lex Salica* contains a set of norms dictated at assemblies on the eastern side of the Rhine by the law speakers living there.

The norms reflected the common tradition of the law of the Franks, both for those who stayed on their native territories of Austrasia and for those who settled in Neustria or Aquitaine. The Salic law was a symbol of unity and tribal identity to them, and it was also a sign of the difference between the Franks and the Gallo-Roman inhabitants of the annexed territories. In reality, however, the situation of the Franks in the vast country of Clovis was very diverse. In the cities of Aquitaine, municipal structures existed and the office of the *comes* was held by Gallo-Roman aristocrats who understood their administrative functions as power delegated from the ruler and most probably would not have been able to imagine who a *thunginus* might be. Very few Aquitaine Franks could effectively refuse to pay taxes and demand that their independence based on the Salic law be respected. They had to deal with state institutions which did not resemble their native assemblies with the *rachinburgi* sitting on the *malloberg* and "speaking the law." Moreover, the Austrasian *grafio*, who appears sporadically in the Salic law, seems someone quite different from the Aquitaine *comes civitatis*.[142] At the beginning of the 6th century, the *thunginus* was still the major figure of Austrasian judiciary. He was the head of the community of the assembly who did not himself adjudicate, but convened the assembly, announced solemn, binding commitments, and fulfilled a number of functions of magical origin. The *thunginus* was not an official; he did not represent the king. If anyone, he represented the native community or, to be more precise, the powers of the traditional order. Historians have tried to describe him as a people's official (*Volksbeamter*), a judge at the assembly (*Thingrichter*), or "a little king" (*Kleinkönig*). A symptom of conceptual helplessness in the face of an archaic culture, these attempts were, however, more or less futile. The *thunginus* was, indeed, a figure from a different world, an important element of the tribal political system. He appeared only in the Salic law. Neither *Pactus pro tenore pacis* of the middle of the 6th century, the subsequent Merovingian capitularies, nor *Lex Ribuaria* mention him. Quite probably, Clovis's sons had already done away with this relict of a past political system, replacing the archaic *thunginus* with the royal centurion. It is impossible to suppose that the *thunginus* was inserted into the Salic law in order to stretch this model to Neustria and Aquitaine. He was included in the codification of the law because it was impossible to do otherwise. It was impossible to ignore a figure that was still the pillar of the judiciary east of

142 Schulze, *Grafschaftsverfassung*, pp. 33–35.

the Rhine and north of the Somme, the tribal stronghold of the Franks. No better proof is needed to show that Austrasian models had been codified in the Salic law.

The Lombard and Frisian examples already discussed instruct us that in the final stage of the composition of the law, the oral tradition was subject to censorial manipulation and a variety of modifications. The same must have taken place when the Pact of the Salic law was being drawn up. But the fact that the position of the *thunginus* was preserved indicates that not everything could be changed right away. But parchment is patient. What was important was that what was written on it should exert a real influence on life. The Malberg glosses demonstrate that at the assembly – in spite of the fact that the law was written down – judicial practice followed the current of ancient oral tradition, and what was spoken and what became a verdict frequently sounded different than the norms written in Latin.

Reminding us that "the law and the court are older cultural elements than writing," Peter Classen has asked: "How was a Frankish judge to handle a book of law written in Latin, a language foreign to him? Did he, to put it crudely, preside over the court holding *Legem Salicam* under his arm or underneath the table?" Herman Nehlsen gave a sceptical answer to this question. According to him, up until the turn of the 8th and 9th centuries, the written Salic law did not have much influence on judicial practice. "The most important norms of this law were well-known, not because people studied *Legem Salicam scriptam* but because these norms were deeply rooted in the oral tradition." Patrick Wormald went even further. In his view, the codifications by the Frankish and Anglo-Saxon rulers were not so much an attempt to exert influence on judicial practice as they were a form of ideological expression, a mimetic gesture through which the barbarian king, like the Roman Caesar, represented himself as a law maker.[143]

It is difficult to find such a gesture in the Pact of the Salic law, the prologue of which attributes the initiative to codify the law to all the Franks, and its rendering to the four law speakers appointed to the task by the assembly. It does not mention the king at all. Keeping a distance from Wormald's impressive hypothesis, I am not inclined, however, to disregard its premises. I also do not underestimate Classen's doubts or Nehlsen's sceptical opinion grounded in a close analysis of sources. Admittedly, in title II, paragraph 14, the law of the Bavarians states that at the judicial assemblies (*placita*) the count should bring "the lawbook, so that he may always render judgment correctly." But this is a later source than the Pact of the Salic law by more than two centuries. The way in which the royal dictate

143 Classen, Introduction to the conference *Recht und Schrift in Mittelalter*, VuF 23, p. 9. Nehlsen, "Zur Aktualität," passim. Wormald, "Lex scripta," pp. 125–138.

was formulated in title II, 14 of the law of the Bavarians suggests that there were frequent divergences from the practice. The requirement to have the written law at hand would have made no sense, however, if in the thirties of the 8th century at least some of the Bavarian *comites* did not know Latin, did not know how to write, or did not have literate aides in the court. A hundred years later, the margrave of Friul, Eberhard, and Count Eckard of Mâcon even had their own book collections in which there was *Lex Salica* and the manuscripts of other laws these dignitaries found useful in their exercise of judicial authority.[144]

Yet in Frankish Austrasia at the beginning of the 6th century there were no such dignitaries. It was not the *comites* but the local assemblies under the chairmanship of the local *thunginuses* who administered law while the *rachinburgi* "spoke the law" in their own mother tongue. The assumption that they knew Latin and, moreover, could read is beyond the realm of fantasy. Classen's and Wormald's doubts are still pertinent, while Nehlsen's sceptical remarks cannot be invalidated by reference to sources that belong to a different era. How could the drafting of the Pact of the Salic law have influenced the simultaneously existing current of oral law and the court?

It is time to address the question of the function of the so-called Malberg glosses. They are an obvious testimony to the distinction between the written law and the spoken law. At the same time they constitute a kind of link, a bridge, that in judicial practice enabled communication between foreign writing and native speech. With time, in subsequent copies, these glosses become more and more Latinized giving rise to a unique *volapück*. This demonstrates the Romance provenience of the scribes, and possibly also of the readers for whom these manuscripts were intended. In Carolingian times, as the cultural gap between the world of the court and the world of writing narrowed, the Malberg glosses became incomprehensible beyond the territory of Austrasia and were more and more often omitted. Some copyists did not even realize that they were dealing with the language of the Franks. The Carolingian scribe of manuscript A-3 announced at the beginning that, "for brevity, to save the reader from difficulty and facilitate understanding, we have omitted here some Greek words […] which we found written in this book."[145] The Malberg glosses gradually became useless. Yet, at the beginning of the 6th century, someone apparently had needed them, since they were meticulously inserted into the Latin text of the first codification.

144 Riché, *Les bibliotheques*, pp. 96 ff. and 101 ff.

145 MGH *Leges nationum Germanicarum*, vol. IV, 1, p. 15.

Ruth Schmidt-Wiegand has strongly emphasized that the richest collection of the Malberg glosses can be found in manuscript C-6 which resembles a text meant for practical, that is, judicial use (*Gebrauchtext*). According to Schmidt-Wiegand, this shows that the glosses were needed by those in judicial practice, "by counts, *thungini*, and *rachinburgi*," because they made it easier to link the spoken with the written law.[146]

I hold a different view on this matter. Indeed, the glosses had a practical purpose linked with the function of the judiciary, but only those who were able to read them could use them, and we cannot credit the *thungini* and *rachinburgi* of the 6th century with this ability. They knew the formulas written in the glosses by heart, yet they were neither capable of finding them in the text nor of associating them with the relevant norms formulated in Latin. What prevented them from doing so were illiteracy and the language barrier. The glosses were, therefore, intended for someone else: for people who knew both Latin and how to wield a pen, but did not know by heart the judicial formulas spoken in Frankish at the assembly by the *thunginus* and the *rachinburgi*. Those using the glosses had to learn how to recognize them as they occurred. To do so they needed a glossary that helped them to correlate the routine expressions of this "judicial speech" and the norms of the written law.

Characteristically, the German entries of the glosses were preceded by the adverb *mallobergo* which means "in a judicial way," rather than "in the Frankish language." I would associate it not so much with the technical functions of those Frankish expressions as with the function of the people for whom the glosses made it easier to comprehend what was being said in the court. Those people did not preside over the assembly, did not pass verdicts, and did not even have to be members of the local community of the assembly (*gamalli*). The Salic law does not mention them directly. They were users of the written law, but they did not perform any traditional function in the court. They remained, as it were, behind the scenes of "the oldest theater of the world." They were, however, to watch carefully what was happening on the judicial stage. And in order to understand what was happening there, despite the language barrier, they were equipped with a glossary of "judicial language."[147]

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146 Schmidt-Wiegand, "Malbergische Glosse als Denkmal," p. 396; "Rechtssprache," p. 160f.

147 There are also suggestions that the codification of the Salic law was intended for use by people who were more fluent in Latin than in the dialect of the Franks. The codifiers of the Salic law did not find it necessary to explain the Latin terms by providing them with Germanic synonyms. The opposite was, however, sometimes the

Who were those people? We could stretch our imagination and think that the Gallo-Roman *comites civitatum* in Aquitaine or the "king's table companions" in Neustria at times referred to the Malberg glosses in order to learn more about the customs of the barbarians. A discreet supervision over the courts of the assembly was mostly needed, however, in Austrasia – north of the Somme and east of the Rhine, where the tribal customs persisted, and the requirements of the new system and the new faith met with the fiercest resistance. Admittedly, there were royal officials there (*grafiones* and *sacebarones*) equipped with instruments of administrative sanction, but the Salic law assigned a rather second-rate role to them; they were to exact some kinds of payment obligations on the basis of the court's verdict, yet they themselves did not participate in the ruling.[148] It does not seem probable that at the beginning of the 6th century, officials of Gallo-Roman origin, whose wergild was worth half the amount of the Frankish, enjoyed recognition and respect among the Austrasian Franks. Title LIV of the Salic law does not even consider such a possibility. According to this norm, the *grafiones* were always free Franks with a triple *wergild* of 600 solidi that protected officials. Unlike the Romans, both free Franks (with a *wergild* of 600 solidi due to public function) and the *pueri regis*, that is, the king's *laeti* with a *wergild* smaller by half (300 solidi), could act as *sacebarones* (collectors). At the beginning of the 6th century, not only the *sacebarones* but also the *grafiones* in Austrasia were just as illiterate as the rest of the local population. They could not, therefore, and nor did they need to study the manuscripts of the Salic law and its Malberg glosses.

These glosses and the text of the law itself were meant for the literate Latins who neither presided over the assembly nor passed verdicts, but could not be denied a prominent place at the *malloberg* without offending the king and the new faith. I am speaking here about Christian clergymen. The Salic law does not mention their presence at the judicial assembly because they did not fit the traditional definitions for judicial roles, and it was better to avoid associating them with the previous role of the pagan priest at the assembly. We do,

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case. Title LVIII tells us that a man asking his relatives to help him pay the wergild should "stand on the *duropello*, that is, on the threshold" of his house (*in duropello, hoc est in limitare*); it so happened, however, that for centuries, every child living in the vicinity of Cologne and speaking the local dialect knew that *Dürpell* meant a threshold (see Schmidt-Wiegand, "Malbergische Glossen als Denkmal," p. 405). Title LXIV also contains Latin explanations of the offensive word *herburgius*, which meant a person who carried a cauldron for a witch which they used for cooking (*illud qui hineo portare dicitur, ubi strias coccinant*).

148 PLS, titles XLV, 2; L, 3 and 4; LI, 1 and 2; LIV, 1–4.

however, have a source younger by 280 years but concerning a similar social situation.

In 782, Charles the Great decided to introduce a territorial administration modeled on the Frankish one in the newly conquered Saxon lands. The annals inform us that he appointed *comites* there, who were selected from amongst the Saxon tribal aristocracy. Three years later, Charles issued the first collection of royal ordinances for these territories known as *Capitulatio de partibus Saxoniae*. In chapter 34 of this capitulary, the king forbade the Saxons to hold general (that is, tribal) assemblies "unless perhaps our *missus* should order them, by our command, to gather together. But each of the counts [*comes*] is to hold courts and to administer justice in his area of jurisdiction [*sed unusquisque comes in suo ministerio placita et iustitias faciat*]. And the *sacerdotes* [priests] are to keep a careful watch on this matter, that things do not happen otherwise" (*et hoc a sacerdotibus consideretur, ne aliter fiat*). According to the king's will, the Christian clergy were to exercise political supervision over the judiciary in Saxony.

The same clergymen were also conducting the mission of Christianizing the populace, making use of all the instruments of compulsion that the conquerors had at their disposal in the conquered country. In chapter 19 of this capitulary, high financial penalties were introduced for any delay to have a child baptized, while an outright refusal to do so was punishable by death. The death penalty was exacted for a variety of crimes against the Frankish authority, the Christian church, and the orders of the new cult (chapters 3–13), but in chapter 14 it was decided that: "if, on account of these capital crimes, anyone who is not known to have committed them takes refuge of his own record with a *sacerdos*, makes confession and wishes to do penance, he is to be excused death on the testimony of the *sacerdos*." As can be seen, the clergy took part in the infliction of repression if only by moderating the punishment.

Chapter 34 speaks, however, not of the punishment to be meted out to political and religious offenders but of the functioning of the judiciary. The priests did not directly participate in the administration of law, but the supervision they exercised went beyond the passive role of "the ears and eyes of the king." They were to oversee the implementation of the changes within the Saxon judicial system which were instituted by Charles the Great. Flanking the Saxon *comites* who were responsible for implementing these changes, the Christian clergymen were something like political commissioners of the king of the Franks.

The situation in Austrasia at the beginning of the 6th century was in some respects similar. Admittedly, the Franks there had not been conquered by anyone; on the contrary, it was their king who had conquered a substantial part of Gaul. But this king accepted Catholic baptism, which meant the obligatory Christianization

of the entire country. We know that it was the bishops' collaboration which had allowed Clovis and his successors to assume effective control over the population of the Roman provinces. It needs to be added that without the bishops' contribution, especially that of the lower Gallo-Roman clergy, neither the Christianization of the Austrasian Franks nor the transformation of their tribal system would have been possible. All this, no doubt, took place in a less violent manner than in Saxony, but the clergy faced a similar task.

The written codification of the tribal law was a significant step towards ousting the pagan cult from everyday life and gradually transforming the social order. Guided, most probably, by realism, Clovis did not decide to revolutionize the judiciary system; he allowed the local assembly communities under the leadership of the *thungini* and *rachinburgi* to continue. Those people functioned, as they had previously, based on their knowledge of the oral legal tradition and not on the Latin text. Yet that Latin text introduced more than a few changes into the old system of customary norms. If these changes were not to remain on parchment as testimony to the king's wishful but futile thinking, then someone had to become their advocate at the *malloberg* and ensure that conformity between the spoken and written law was maintained. This task was most probably performed by Christian clergymen who combined – as in Saxony under Charles the Great – their Christianizing mission with supervision over the judiciary.

A mere ten years had passed between Clovis's baptism and the codification of the Pact of the Salic law. It is unlikely that in such a short time a considerable number of Frankish clergy could have been created. The missionary as well as political work on the tribal territories of the Franks had to be carried out by clergy of Gallo-Roman origin. They no doubt knew Latin much better than they knew the Frankish dialect, let alone the formulas spoken in this dialect at the *malloberg*. If these people were to effectively supervise the conformity of the *rachinburgi's* verdicts to the written law, then an index of the correlation between the most important expressions of "judicial language" and the Latin norms of the Pact of the Salic law would be an indispensable tool in their work.

The Frankish Malberg glosses do not have a functional equivalent in the codifications of the legal traditions of other barbarian peoples. We can, however, base more general conclusions on this particular exception. Clovis's codification took place under specific circumstances, but these circumstances shed light on the anthropological situation common among the European barbarians, and were linked with the transfer of legal norms from the realm of traditional culture based on oral transmission to the realm of literate civilization.

For the Franks, these two cultural realms were strictly separated by the language barrier at the moment of codification. As a result, the people overseeing

the implementation of the written law had to be equipped with a special decoder, that is, the Malberg glosses. That was an exceptional circumstance. In Rothari's edict, the Germanic insertions are nearly as frequent as in the Salic law, but they are of a different character. In the description of the ritual of a slave's manumission, after the manumitted slave was thrice passed from hand to hand, the culminating point had been depicted in the following way: "And this fourth man shall lead him to a place where four roads meet and *thingat in gaida et gisil*, and say: 'From these four roads you are free to choose where you wish to go.'"[149] Except for the conjunctions ("*in*" and "*et*"), it is not easy to explain the Germanic expression *thingat in gaida et gisil*. It is not a formula spoken at manumission (that part was written in Latin) but a description of ritual gestures. The verb *thingare*, deriving from the noun *thing* (assembly), meant making a gift publicly, most probably confirmed with a symbolic sign of approval by those gathered. *Gaida* and *gisil* are most probably "an arrow" and "a stick," or possibly "a shaft" and "a spearhead."[150] The verb *thingare* also meant to publicly bestow freedom on someone.

What is characteristic is that this Lombard expression, neither translated into Latin nor explained in any other way, constituted an integral part of the sentence formulated in Latin. This sentence was only understandable to bilingual people, because the Germanic verb with a Latin conjugational ending was the predicate here: *thingat*, that is, "bestows publicly," "publicly bestows freedom." This was the rule in Rothari's edict and in the edicts of his successors; Germanic-language expressions were syntactically integrated with the Latin text which would, without them, be meaningless. The Lombard words were not usually translated, though there were exceptions. Sometimes a Latin synonym was given (e.g., *faida quod est inimicita*), while at other times, a Latin phrase deemed not to be sufficiently precise was explained through reference to the original Germanic term. The ritual of manumission discussed here was used when the slave's lord intended to "make [his slave] *fulcfree* and a stranger to himself, that is, *amund*" (*nam qui fulcfree et a se extraneum, id est amund, facere voluerit, sic debit facere*). The term *fulcfree* ("entirely free") apparently did not have to be translated, while the Latin expression *a se extraneus* ("a stranger to himself") had to be specified; the German word *amund* indicated that the manumitted slave would not be subject to the lord's *mund*, that is, guardianship understood in terms of artificial kinship. "Stranger" (*extraneus*) was meant to signify in this case "non-relative," that is, not subject to the lord's *mund*, or in other words, fully free.

149 LL, Ro, chapter 224, p. 64.

150 Frankovich, Onesti, *Vestigia*, pp. 88 and 93.

Many more examples can be found. They all unanimously indicate that Rothari's edict was created and functioned within a bilingual community. In the last sentence, Rothari stipulated that only the official version of the edict, drawn up and authorized by the royal notary Ansoald, was reliable.[151] This Ansoald, apparently responsible for the final shape of the codification, was – judging by his name and the many barbarisms in the text – an indigenous Lombard. Seventy-five years had passed since Alboin's invasion of Italy. The grammar, spelling and vocabulary of the edict demonstrate that the Lombards did not forget their mother tongue over that period of time, and that they had simultaneously mastered the vulgar Latin of the Italo-Romans and left their mark upon it. There were no linguistic obstacles in the communication between the traditional culture of the conquerors and the crumbling civilization of the autochthons. Every Lombard governor, *gastald*, or *skuldahis* was able to understand the norms of the edict without the aid of a translator – under the condition, however, that someone read it out to him or that he himself could read.

We can assume that in the middle of the 7th century the knowledge of writing was still a great rarity among the lay Lombards. They spoke the vulgar Latin, but when a need arose to read something, they had to turn to the clergy. Notary Ansoald himself, the main editor of the edict, was probably a clergyman. The question is whether he was a Catholic or an Arian priest. Rothari was, after all, an Arian. Since Authari's rule (584–590), and in particular, since Agilulf and Theodelinda's rule (590–614), the position of the Catholic church had seen a gradual reconstruction. The omission in the edict of the myth which for centuries had legitimized tribal law demonstrates the extent to which Catholic requirements of correctness had influenced Rothari's codification (the Arians were less categorical in this matter). Among the Lombards, as among other barbarian peoples, the codification was the complex result of encounters, collaboration, and confrontation between the Christian clergy and the carriers of the tribal tradition that Rothari referred to as "the elders" (*antiqui homines*) in the prologue and epilogue.

Lex Alamannorum and *Lex Baiuvariorum* both begin with resolutions meant to protect the interests of the Church. These codifications come from the first half of the 8th century. The Alemanni and the Bavarians had by then been long Christianized, and their dukes recognized the sovereignty of the Frankish kings.

The laws written down at the beginning of the 7th century in the native language of the newly-baptized king, Aethelbert of Kent, begin with norms devoted to the special protection of the Church. The question of whether St. Augustine and his

151 LL, Ro, chapter 224.

fellow missionaries had enough time to learn the language of the Anglo-Saxons well enough to allow them to have a hand in the drawing up of the law does not change the fact that the content of Aethelbert's codification clearly indicates the Church's co-authorship.[152] In King Alfred's codification of the 9th century, the legal norms proper were preceded by Old English translations of the Decalogue and other biblical injunctions. The idea was that the Anglo-Saxons' norms, once legitimized in the oral tradition by the pagan *sacrum*, should be derived in their parchment version from the Holy Bible. The Anglo-Saxon clergy and kings understood codification to be a part of missionary work.[153]

We can find traces of the Church's active participation in the codifications of the barbarian laws everywhere: from the Salic law to the *Russkaya Pravda*, and from Rothari's edict to the *Frostathing* law. In all these codifications we can suppose a more or less discreet supervision by the clergy over the judiciary, and their indirect participation in the implementation of the norms of the written law. The efforts of the people of the Church brought *lex scripta* to life, ensuring its influence on real life. For scholars researching traditional tribal communities, this is a troubling circumstance, because the influence of the Church upon codifications transferred models of classical culture and civilized law everywhere, including to those places where the barbarian population lived far from the Romans or the Byzantines and had not experienced conquest by the heirs of the Empire. All *leges barbarorum* are more or less marked by this influence.

Yet, the traditional culture and the norms of customary law that constituted its integral element did not easily yield to pressures from the monarchy and the Church. The epilogue to Rothari's edict, similarly to the short prologue to the Pact of the Salic law, contains specific declarations of loyalty to legal tradition made by codifiers, who nevertheless intended to change whatever they could. Not everything, however, could be changed right away. It was not sufficient to swear to tradition. One had to reckon with it by keeping in force norms that were unpalatable to the kings and the bishops, yet too deeply ingrained in culture to make any attempt at change successful. This is why there are so many norms and rituals of evidently pagan origin in the Salic law and Rothari's edict.

Sometimes, hasty innovations ended in a fiasco. The attempt to impose the *comes* judiciary on the conquered Saxons, as decreed by Charles the Great in

152 Wallace-Hadrill, *Early Germanic Kingship*, p. 40f.

153 Liebermann, GA, vol. I, Aelfred, pp. 26–45. See also the promulgation of Edmund's edict from 943–946, p. 186: the king institutes a law that limits the extent of blood feud, thinking that he "could strengthen Christianity in this way" (*hu ic maehte Cristendomes maest araeran*).

the Capitulary of 785 which I have already mentioned, met precisely this kind of fate. After twelve years, the victorious king of the Franks had to accept the failure of the premature initiative. Even though the office of the *comes* was assigned to representatives of the Saxon tribal aristocracy who were loyal to the Franks and supported and controlled by the clergy, the new officials apparently did not command authority in their new roles as judges. In the second Saxon Capitulary, issued on 28 October 797 in Aachen, Charles the Great allowed the local assembly communities to hold judiciary power in accordance with the age-old custom of the local tribes (*secundum eorum ewa*). The conqueror gave in to tradition and insisted only on one thing – that these local communities recognize the king of the Franks as the highest judicial power.[154]

King Liutprand, the most outstanding Lombard codifier after Rothari, was aware of the power of tradition. In 721, he decided that premeditated murder should not be punished with ordinary wergild but with the transfer of all of the culprit's possessions to the relatives of the victim.[155] After ten years, the king realized that the amendment of 721 produced unforeseen and unwelcome results. Namely, the heirs of people who had died in bed would claim that they had been poisoned, falsely accuse someone of the crime, and then prove the veracity of the charge through a duel, in order to finally seize the possessions of the defeated opponent.

It seemed unacceptable to Liutprand "that a man should lose his entire substance as the result of a duel fought by one man." The king did not decide, however, to ban the proving of charges in a duel, "those things having been observed which were prescribed in the earlier edict." He only decided that the alleged killer, whose guilt had been proven in such a way, was to pay only the wergild to the relatives of the murdered and did not have to give them all of his possessions. The comment which Liutprand makes on this next amendment is telling: "For we are uncertain concerning the judgement of God [in this matter] and we have heard that many men have unjustly lost their cause through combat; however, on account of the customs of the Lombard people we are unable to abolish this law" (that is, the law to use duel as a means of court evidence – *quia incerti sumus de iudicio dei, et multos audivimus per pugnam sine iustitia causam suam perdere; sed propter cosuitutinem gentis nostrae longobardorum legem ipsam vetare non possumus*).[156]

154 CPS, chapter 34 together with CS, chapters 4 and 8.

155 LL, Li, chapter 20, p. 140.

156 LL, Li, chapter 118, pp. 186–188, year 731.

This is a unique confession. The king codifier admitted his powerlessness in the face of custom. But what Liutprand openly confessed, others knew as well. Also the Church – the unquestioned co-initiator of the changes introduced during codification – was aware of the fact that these changes had to be administered carefully, leaving in force for yet some time certain norms of pagan origin. A short passage in the prologue to the law of the Bavarians is a telling testimony to this attitude: "And what King Theuderic because of the ancient pagan customs could not correct (*propter vetustissimam consuetudinem paganorum emendare non potuit*), King Childibert began after this, but King Chlothar completed."[157] The learned monk who wrote these words may have been mistaken as to the role of particular rulers in the work of codification, but he had the accumulated experience of the Church at his disposal and knew how effectively the pagan tradition resisted attempts at modernization.

This resistance of tradition to novelty is favorable for the historian. It offers the chance to find elements of the archaic order within the written laws. But this resistance was not equally strong everywhere. The traditional cultures yielded most quickly and suffered their severest erosion where the barbarian elites created Romano-barbarian states in symbiosis with the Roman elites and adopted the administrative and fiscal structures of Roman statehood. This is most visible in the case of the Visigoths. Receswind's codification from the middle of the 7th century had already included the Romans as equal with the Goths, and common Roman law had a decisive influence on its norms.[158] For this reason, *Liber iudiciorum* does not fit the category of the laws of the barbarians, and it is hard to treat it as a source of information on the former political system and culture of the Gothic tribes. The same has to be said about Theuderic's edict, irrespective of the disputes about the Ostrogothic or Visigothic provenience of this source. The other barbarian codifications – from the Salic law to *Russkaya Pravda* and from Rothari's edict to Grágás – lie within the comparative horizon of our research. We obviously cannot claim that these laws contain a record of tribal norms uncontaminated by Roman influence. Yet, neither can we claim that the pressures from the Christian state and the Church eradicated the legacy of the tribal political system and the models of traditional culture from them. To separate the archaic legacy from what was an outcome of pressures from royal authority, the intervention of the clergy, and the impact of classical culture is amongst the most difficult tasks a researcher of barbarian codifications faces. There is no universal formula

157 LBaiuv, Prologue, p. 8.

158 Diaz-Salinero, "El codigo de Eurico;" King, *The Alleged Territoriality*.

here, because the encounters between the particular barbarian peoples and the Mediterranean civilization and its heirs took a variety of shapes, and these differences left their stamp on the legal codes. These sources demand an individualized approach. What we can say about all of them is that each contains invaluable information about the world of the barbarians, and in each of them this information is more or less scarred by the deforming influence of civilization. We cannot completely eradicate this influence since it is present, in one form or another, in all of our sources. We can limit it, however, through a comparative interpretation of different sources.

Chapter III. An Individual in the Realm of a Kinship Community

1. Revenge and Wergild

According to Tacitus, for the Germanic peoples, "To take on the enmities and friendships of one's father or kinsman is a firm obligation. But these do not endure without chance of resolution, for by a fixed number of cattle and sheep they can make amends even for manslaughter, and the entire family receives satisfaction: to public advantage, since feuds waged freely are more fraught with danger" (*Suscipere tam inimicitas seu patris seu propinqui quam amicitias necesse est; nec implacabiles durant; luitur enim et homicidium certo armentorum ac pecorum numero recipitque satisfactionem universa domus, utiliter in publico, quia periculosiores sunt inimicitiae iuxta libertatem*).[159]

The interpretation of this passage of *Germania* has long been uncontested, despite the ornamental stylistics obfuscating the sense of the argument. The Latin sources of the early Middle Ages routinely used the word *inimicita* as a synonym of the Germanic term *faida* (feud). We can infer from the context that the word *inimicita* had this meaning also in chapter 21 of *Germania* and possibly already in the lost *History of the Germanic Wars* by Pliny the Elder, from where Tacitus drew the most valuable information. Tacitus himself relished antitheses so he added to the word *inimicita* its opposite (*amicitia*), although he continued to talk only of the feud and not of friendship.

The obligation to take on (*suscipere*) the feud of one's father or kinsman was – as can be gathered from the rest of the sentence – a consequence of homicide. What did this duty consist of? Commenting on the public benefit resulting from the acceptance of material compensation by the family of the killed, Tacitus has drawn our attention to the fact that those feuds that were not conciliatorily resolved threatened, when practiced freely, to shatter the domestic peace with bloody discord. This means that the logical fulfillment of the obligation led to bloody revenge – death for death. Fortunately, the Germanic peoples were not implacable. When all interested kinsmen (*universa domus*) accepted the material compensation for the death of one of their relatives, reconciliation put an end to the feud and eradicated the source of the conflict between the fellow tribesmen. The internal peace that had been violated by the homicide was thus restored.

159 Tacitus, *Germania*, chapter 21.

The material compensation that we are talking about here is nothing other than the Germanic wergild, or Slavic *golovnicestvo or golovščina*. It was essentially a payment made to avoid revenge – blood money. In early statehood, the royal power and the Church took up the struggle to limit blood feud. The written codifications played an essential role in this struggle. Amongst the preserved codifications of the legal tradition of the barbarian peoples, there is only one that not only does not try to curb the blood feud, but treats it as a basic form of punishment for murder. The code in question is the oldest of the codifications from Rus', the so-called, *Short Russkaya Pravda* from the times of Yaroslav the Wise (1015–1054).

"*Ub'et' muž' muža*," the first article of the *Short Pravda* decrees, "*to m'stit' bratu brata, ili synovi otca, ljubo otcju syna, ili bratučadu, ljubo sestrinu synovi; ašče nie budet' kto m'stja, to 40 griven za golovu*" ("If a man kills a man: the brother is to avenge his brother, or the father [his son], or the son [his father], or the son of the brother, or the son of the sister [their respective uncles]; if there is no avenger, 40 *grivna* for the head").

The infinitive *mstit'* seems to express a command whose meaning is similar to Tacitus's words: *suscipere inimicitias seu patris seu propinqui necesse est*. The duke's codifier assumed the honorable duty of feud and the ancient custom related to it to be a norm of the written law. It was not, however, a categorical order. It was permitted to act in accordance with the demands of honor, but it was also allowed to reconcile and accept 4o *grivna* for "the head" of the killed man if all interested parties agreed to take the amount due and to desist from revenge. In this situation, Tacitus emphasized the acceptance of the compensation by all the relatives (*recipit satisfactionem universa domus*), while *Russkaya Pravda* stressed the relinquishment, by each of them, of revenge (*ašče nie budet' kto m'stja*). The outcome was the same. This is how, in my view, we should understand *Russkaya Pravda's* words regarding the absence of avengers.[160] There is no doubt, however, that revenge was given priority in the *Short Pravda*, while material compensation, the wergild, constituted a kind of surrogate punishment, an outcome of a private agreement between the feuding parties. These were old, customary rules. Only the standardization of the amount of wergild – 40 *grivna* for all free men – was most probably instituted through the act of ducal power.[161]

160 This is how Sergeevič (*Lekcji*, p. 228) and Frojanov (*Kievskaja Ruś*, pp. 33–36) have also understood this.

161 The last sentence of article 1, placed after the words *to 40 griven za golovu* continues: *ašče li budet' Rusin, lubo gridin, lubo kupčin, lubo jabetnik, lubo mečnik, ašče izgoj budet, lubo Slovenin, to 40 griven położiti zan*' ("if he be a rusin, or a grid', or

Vladimir Monomahk's (1113–1125) codification a hundred years later, the *Vast Russkaya Pravda*, begins with a nearly literal repetition of the norm from the *Short Pravda* concerning murder, revenge, and wergild, with the only difference being that for the head of the duke's official it commands a twofold payment.[162] Right after these words, in article 2, we can read that a new law concerning feud was passed after 1054: "After Yaroslav, his sons Iziaslav, Sviatoslav, and Vsevolod […] met in a conference and deferred the [custom] of blood revenge, and [instead ordered] composition of [the crime] by money [in *kuna*]. And as to anything else, all that Yaroslav had decreed, his sons confirmed accordingly" (*Po Jaroslave že paki sovokupišesja synove ego: Izjaslav, Svjatoslav, Vsevolod* (…) *i otložiša ub'enie za golovu, no kunami sja vykupati; a ino vse jako že Jaroslav sudil, tako že i synove ego ustaviša*). The *kuna*, more precisely a marten pelt, was a commonly used commodity for payment at the time in Rus'. "In *kuna*" in article 2 of the *Vast Pravda* refers obviously to wergild. What is noteworthy is that the payment of wergild was described using the verb *vykupati sja* (to buy off). In contrast to *ub'enie za golovu* (killing [in revenge] for the murdered man's head), it meant: to buy one's life from the hands of the avengers. No other source in medieval Europe represents wergild so clearly as a means of buying off revenge.

Russian historiography holds the belief that the amendment of article 1 of *Russkaya Pravda*, made at the reunion by Yaroslav's sons, banned blood feud completely. In accordance with this belief, in the academic translation of *Pravda,* the Old Church Slavonic verb *otložiti* was rendered in Russian as *otmenit'* (waive, abolish, abrogate).[163] It is enough to consult a dictionary to learn that this was not the only meaning of the word *otložiti*. It also, or above all, had another meaning preserved in Slavonic languages even today: Russian *otložit'*, Serbian and Croatian

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a merchant, or a boyar's official, or a mechnik, or an exile, or a slovenin, then 40 *grivna* for the murdered"), suggests this.

162 Such punishment was already introduced by article 19 of the *Short Pravda* (*ašče ubjut' ogniščanina v obidu, to platiti za n' 80 griven ubiici*…), evidently later than article 1. Zimin (*Pravda*, pp. 122–124) argues that this part of the *Short Pravda* (articles 19–43) was a supplement to the original codification of Yaroslav, accepted at the first reunion of his sons which took place between 1036–1054 while their father was still alive.

163 *Russkaya Pravda*, B. D. Grekow, vol. II, *Kommentarii*, p. 245; see also Juškov, *Obščestvenno-političeskij stroj*, p. 486; Tichomirov, *Posobie*, p. 88; Grekov, *Kievskaja Rus'*, p. 121f. and 144; Zimin, *Pravda*, p. 203f. Sergeevič holds a different view (the only Russian scholar, perhaps, who has in this context referred to the legality of the feud in the whole of medieval Europe); so does Frojanov (*Kievskaja Rus'*, pp. 37–41) who draws our attention to the philological shortcomings of the prevailing interpretation.

odložiti, Polish *odłożyć*, that is, "to postpone, set aside, defer."[164] Yaroslav's sons did indeed waive the norm which in the case of murder gave priority to the feud, but this did not mean that the feud was from then on, irrespective of circumstances, forbidden. It was put aside (deferred, suspended) in order to give priority to wergild. If, however, the culprit did not redeem himself from death by paying wergild to the potential avengers, they had all the right to kill him with impunity. This was the case throughout Europe, and article 2 of the *Vast Pravda* does not at all suggest that Rus' was an exception in this respect.

What was exceptional in Rus' was that the oldest codification still treated the feud as the basic punishment for murder. Yaroslav the Wise apparently thought that the situation was not yet ripe for a modification of the traditional norms concerning the feud. Thanks to that and to the detailed record of the amendment carried out by Yaroslav's sons, subsequent editions of *Russkaya Pravda* allow us to capture the moment of the reversal of the priorities. Up until then, the feud had been given priority; afterwards, the priority was given to wergild.

In the Germanic world, only the Swedish *Westgötalag* of the early 13th century gave priority to the feud over the wergild. Yet in comparison to the *Short Pravda*, the chances of actually carrying out the blood feud were limited here in various ways. *Westgötalag* radically diminished the number of avengers; this meant primarily the heir of the victim. If the young age of the heir did not allow him to independently appear in court, then the victim's adult next of kin had the right to submit the charge of murder at the judicial assembly.

Moreover, *Westgötalag* kept the feud within the bounds of ritual and required that one first follow a long-lasting judicial procedure. The heir or adult next of kin of the victim had to announce at two consecutive assemblies (*things*) that the murder took place. At the third assembly he accused a particular person of committing the crime. The accused should then attend the assembly and, standing outside the limits of the assembly square, ask through a third party for a guarantee of peace. Those gathered at the assembly (the *thingsmaen*) had to grant it. From that moment, the accused could participate in the proceedings without fear, because the peace granted by the assembly protected the accused from the revenge by the victim's relatives until the day when, at the following assembly, the verdict was announced. The convict enjoyed immunity until the end of the ill-fated day; he could go back home and have dinner in peace. He had to eat his supper in the woods, though.

164 *Slovar' drevnerusskogo jazyka (XI–XIV vv.)*, vol. VI, p. 247.

From then on, the culprit had to be on the run, or, to be more precise, to live in hiding like an exile (*frith flyiä*), although he was not an object of a general feud. It was only in relation to one or two of the closest relatives that the convict was "deprived of peace" (*fridlösän*). The local community of the assembly that passed the verdict and the court (*herad*) made sure that everyone duly played their role in this private drama. The person heading this community – the *haerathshöfthingi* – was obliged to ensure that the convicted murderer did, indeed, leave his home and hide in the woods. This gives the impression of a convention, a ritual game of escape and pursuit. But this was not an innocent game. According to the verdict passed at the assembly, the culprit was, in relation to the victim's heir and his next of kin, a *fridlösän*, and those two could kill the culprit "without payment" (*ugildan*), that is, without paying the wergild for his death.[165] Legitimate revenge was exempt from punishment.

The limitations imposed on blood feud were meant to persuade the interested parties to accept the wergild. The codifier of *Westgötalag* did not go as far as to proclaim, as Yaroslav's sons did, that wergild had priority and that the feud should be postponed so that the culprit would have time to collect the requisite amount of money. The regulation concerning the amount of wergild and how it was shared and paid is very detailed in *Westgötalag*, but appears after the regulation concerning the feud and begins with the following words: "If they [the relatives] want to accept the payment."[166] The feud was given priority, while wergild could replace it if such was the will of the wronged. Only in the case of murder committed by slaves were these rules reversed. *Westgötalag*, like other barbarian laws, deprived the slaves of legal subjectivity and held their masters judicially responsible for any crimes they committed. In the case of murder, it was formulated rather clearly: a slave "cannot be called a murderer." His master was to pay both parts of the wergild – *arvabot*, for the victim's immediate heirs and *aettarbot*, for the other members of the clan. He did not have to "escape as someone deprived of peace" (*frith flyiä*), unless he refused to pay.[167] In this case, the feud was a surrogate punishment meted out only to those who did not pay the wergild.

In the Latin sources, beginning with Tacitus, the word *inimicita* (literally, "unfriendliness") was the equivalent of the Germanic term *faida*. In contemporary German, the noun *Fehde* means both "dispute" and "state of war." The English

165 WgL, Af mandrapi 1, paragraphs 1–3.
166 WgL, Af mandrapi 1, paragraph 4.
167 WgL, Af mandrapi 1, paragraph 4.

word "feud" has retained its meaning. In Latin, friendship (*amicitia*) is the conceptual opposite to feud (*inimicita*), and we do indeed encounter such opposition in the sources. But *Westgötalag* describes the state of feud in a different way; the murderer is, in relation to the legitimate avengers, a *fridlösän*, a person deprived of peace. This means that the victim's relatives are on a war footing with the culprit. The Byzantine author of *Strategikon* similarly describes the South Slavonic notion of feud: *polemon*, that is, war. The opposite of feud thus understood is peace.

The point here is not only about terminological and semantic subtleties. Despite the limitations to which blood feud was subjected in *Westgötalag*, the dealings it describes very much resemble warfare. What we have here is an armed hunt for a man hiding in the woods who no doubt is also armed. The law of the Alemanni depicts this even more vividly. The victim's family remains at the place of the crime by the body of their relative and summons all their relations from the vicinity, and then they set off armed to the killer's home to take bloody revenge on him.[168] To take revenge on the culprit in his own house was, admittedly, forbidden and severely punished, yet it does not diminish the credibility of the depiction. Exacting revenge is represented here as a private campaign of war, and everything would have been perfectly all right had it not been for the fact that the bloody epilogue took place in a prohibited place.

Let us add that feud could be a response not only to murder but also to theft, injury, battery, or affront, with the difference being that in the case of theft, battery, and certain affronts, the revenge was individual (from the victim), while murder entailed the armed reaction of the kinship group.[169] Each of these crimes and the victims' legitimate reaction placed the feuding parties in a state of war, and the breeding of private wars, as Tacitus noted, could destroy the public peace of the tribal community or state.

This is why the barbarian rulers did everything they could to replace the feud with wergild – for the relatives in case of murder, for the victim in case of injury, battery, or insult. In his edict, Rothari raised the stakes and justified his decision in the following way: "In the case of all wounds and injuries mentioned above, involving freemen as they do, we have set a higher composition than did our predecessors in order that the *faida*, that is, the blood feud, may be averted after receipt of the abovementioned composition, and in order that more shall not be demanded and a grudge shall not be held. So let the case be concluded and friendship remain between the parties. And if it happens that he who was struck

168 LAl, tit. XLIV, 2.

169 Lfris, tit. II, p. 38; see also Vlemar's addition.

dies from the blows within a year, then the one who struck the blow shall pay composition according to the quality of the person [*angargathungi*]."[170]

This argument was much more than an attempt at persuasion. It was a justification of the new law founded through an act of royal will – we are raising the value of compositions and desire that they be henceforth accepted in lieu of revenge. The imperative norm that in case of death resulting from injuries the wergild should be paid and accepted is also binding. Yet here Rothari did not specify the amount to be paid, leaving it, therefore, on the customary level. There is no doubt that the edict reversed the ancient order by giving priority to the wergild over the feud.

All *leges barbarorum* except the *Short Russkaya Pravda* and *Westgötalag* had already completed this transformation. Yet the transformation of wergild into the basic punishment for murder was not tantamount to the elimination of the feud. The law of the Thuringians already in the first title required that punishment for the murder of an *adaling*, that is, of an aristocrat, be 600 solidi in composition, while for the murder of a common free man it was 200 solidi. Title 27 stipulates that only men can inherit land and receive with this land the "war outfit, that is, armor, the revenge for a relative's death, and the payment of wergild belong to him who will inherit this land" (*ad quemcumque hereditas terrae pervenerit, ad illum vestis bellica, id est lorica, et ultio proximi et solution leudis debet pertinere*). The right to revenge, though limited, was nevertheless respected.

Rothari's edict prescribed the payment and acceptance of wergild. We learn from this same edict, however, that when they accepted the wergild, the relatives also simultaneously swore an oath to cease the feud (*sacramenta prestita pro ampotandam inimicitia*).[171] What logically follows from this is that if the wergild was not paid, the feud could follow its traditional path. Whoever did not pay was subject to revenge.

This rule was also formulated incidentally, yet clearly, in the law of the Saxons. As was unambiguously stated in titles XIV and XVI, a wergild adequate to one's social standing was the punishment for murder. We learn in title XVIII, however, that if the murder was committed by a half-free *laetus* at the master's instigation or under his order, then the master would be held responsible for it. In a case like this, not the *laetus* but his master "either pays the wergild or is subject to revenge" (*dominus conpositionem persolvat vel faidam portet*). This formulation pertains to a specific situation, but reveals a general principle: feud was a legal

170 LL, Ro, chapter 74, p. 28.
171 LL, Ro, chapter 143, p. 40.

alternative to wergild, and its bloody conclusion was, under certain conditions, entirely legal.

"Under certain conditions" meant not always and specifically not everywhere. The avengers who killed someone in his own home were subject, in accordance with the law of the Saxons, to the death penalty (*qui hominem propter faidam in propria domo occiderit, capite puniatur*).[172] In *Lex Saxonum*, the death penalty was not a matter of private revenge but an instrument of political repression on the part of royal power. In this case, it was meted out not for exacting the customary revenge but for doing so in an illicit place, that is, for violating the domestic peace. This was a peace of sacred origin, which had been until recently guaranteed by the tribal community and later by the victorious king of the Franks. A drastic violation of this peace threatened both the authority of the king and the internal peace on the newly conquered territories. Hence we find the draconian punishment which Charles the Great meted out lavishly and immoderately in Saxony. In the Capitulary of 785, he instituted the death penalty for even eating meat during Lent.[173]

The sacred peace limitation of the right to revenge was based on an old tribal tradition. Title I of the Frisian *Additions of the Wise Men* seems closest to this tradition: "A man who is at feud has peace in the church, in his house, on the way to the church, returning from the church, on the way to court. He who breaks this peace and kills the man, pays nine times 30 *solidi*. He who injures him, pays nine times 12 *solidi* to the king."[174]

The amount of 270 *solidi* was much higher than the wergild of a Frisian nobleman, while the amount of 108 *solidi* was much higher than any other composition. In this case, however, these amounts were not wergilds or compositions meant to redress the wrongs done to the victims, but were instead, public punishments paid to the king (*ad partem regis*). The calculation of these penalties was based on the multiples of 30 and 12 *solidi*, which does not seem to be a coincidence. According the Frisian law (title XVI), the culprit, irrespective of the wergild due to the victim's relatives, had to pay 30 *solidi* to the king as "peace money" (*pro freda*), a public penalty for the violation of peace. This public penalty, as well as the wergild, was – according to title XVII – multiplied if the murder was committed in

172 LSax, XXVII.

173 CPS, chapter 4.

174 LFris, *Additio sapientum*, title I: *Homo faidosus pacem habeat in ecclesia, in domo sua, ad ecclesiam eundo, de ecclesia redeundo, ad placitum eundo, de placito redeundo. Qui hanc pacem effregerit et hominem occiderit, novies XXX solidos conponat. Si vulneraverit, novies XII solidos conponat ad partem regis.*

a place especially protected by peace: "He who kills someone in the court of the duke, in church, or in the hall of the church, pays nine times his wergild, and nine times his peace money (*fredus*) to the king."

The coincidence is even more obvious as both cases speak of a murder committed in church. The penalty of nine times 30 *solidi* in title I of the *Additions of the Wise Men* is nothing other than the nine times *fredus* mentioned in title XVII of the Frisian law. Yet in title XVII, the victim of the murder is not a criminal pursued by the avengers, hence the nine times peace money co-appears with the ninefold wergild. In title I of the *Additions of the Wise Men*, the case is different; it was a *homo faidus* who has fallen victim to revenge, that is, a criminal who did not pay the wergild for his act and was subject to legitimate feud. If the avengers also violated church, house, or assembly peace, then the king had to be given nine times *fredus*, but no wergild was mentioned at all. Likewise, nothing was said of compensating the wounded criminal whom the avengers caught inside the church, at his home, or at the assembly. Nine times twelve *solidi* represented the *fredus* due to the king for the violation of peace and not a composition for wounds inflicted in the act of revenge. Apparently, the victim was not entitled to such redress. What all this suggests is that a man at feud (*faida*) was under the protection of the law only in places of refuge where everyone, without any exception, was protected by peace. Everywhere else, the *homo faidosus* could be killed with impunity by the legitimate avengers. In such a situation, his family was entitled neither to wergild nor to their own revenge.

2. Parties to Feud and to Reconciliation

In a situation when feud was admissible because the wergild was not paid, it was also still remembered that wergild itself was redemption from revenge. Liutprand, the king of the Lombards, evokes this principle in the edict of 717, which is 74 years after Rothari decreed that rather than take revenge people should accept composition.

In 713, Liutprand changed the old inheritance custom, deciding that if there were no male heirs, then a deceased Lombard's inheritance was to be taken by his daughters as if they were his sons.[175] While this reduced the chances of the King's treasury taking over the legacy, it more importantly placed the other male relatives of the deceased further down the line for the inheritance. Until that time, they had inherited the land of their deceased relatives who had no sons.

175 LL, Li, chapter 1, p. 128.

But the amendment to the inheritance law gave rise to complications and misunderstandings that the king had not predicted. According to the old custom, the heir of a victim of murder was entitled to receive the largest share of wergild. Yet, it happened at times that the daughters who, pursuant to the edict of 713, claimed their murdered father's inheritance also demanded the part of the wergild that belonged to the heirs, and entered into court disputes over this issue with the deceased's brothers, nephews, or other male relatives. Such issues were bound to end up at the royal court itself. Liutprand not only dismissed the daughters' claims, but also turned his verdict into a legal norm and added it, together with an appropriate justification, to the edict of 717. Although we allowed daughters to inherit – the king explained – it is not they who should take wergild from their father's killers, but rather his male relatives: "the nearest [male] relatives of him who was killed – those who can succeed him within the proper degree of relationship – shall receive that composition" (*quamquam filias instituissimus heredes, sicut masculos* […] *ipsam conpositionem volumus ut accipiant propinqui parentes eiusdem qui occisus fuerit, illi qui per capput succedere potuerunt*). What is significant here is the reason why, in Liutprand's view, the daughters should not be entitled to the wergild for their father's death: "For daughters, since they are of the feminine sex, are unable to raise the feud" (*quia filiae eius, eo quod femineo sexu esse provantur, non possunt faidam ipsam levare*).[176] Feud and revenge, similarly to war, are a masculine issue; and wergild, as redemption for feud, can only be paid to potential avengers. For Liutprand, this was obvious and a basic assumption of the norm.

It is worthwhile to follow this lead and to look more closely at those entitled to receive the wergild. They were those who had to be given the blood money in order to escape their revenge. The sharers of the wergild constituted the collective group of actors in the feud, the group obliged by honor to take bloody revenge on the killers of their relative. The norms defining how the wergild was to be shared can give us an idea of the scope and structure of this group.

Title I of the Frisian law, which addresses murder, incidentally mentions that two-thirds of the wergild are due to the heir while one-third to the other relatives of the victim (*de qua multa due partes ad heredem occisi, tertia ad propinquos eius proximos pertineat*).[177] The words *propinqui* and *proximi* (closer) referred in the medieval law codes to the next of kin and, in spite of appearances, they did not necessarily have to be the closest relatives. They were usually collateral relatives

176 LL, Li, chapter 13, p. 134.

177 LFris, I, 1, p. 34.

ordered according to their closeness of kinship to the person who was the reference point, in this case, the testator or the victim of the murder. It seems that this group was also entitled to one-third of the wergild in the law of the Saxons.[178]

A similar principle, though in different proportions, was adopted in the Salic law. Title LXII thus regulated the sharing of the wergild: "If a father of somebody is killed, his sons shall collect half of the composition and those relatives who are closest to his father and to his mother shall divide the other half among them. If there is no relative on one side, either the paternal or maternal, that portion of the composition will be collected by the fisc […]."

There are sons but no daughters here. It seems, therefore, that the oldest record of the Frankish custom was still in accord with the principle that Liutprand so emphatically formulated among the Lombards: only male relatives had a share in the wergild because only they could be the avengers. Despite its laconic formulation, title LXII of the Salic law clearly suggests that the group of potential avengers was not limited to household members. On the one hand, there are sons, and on the other, secondary relatives on the mother's and father's side – the father's brothers, mother's brothers, their sons, etc.

What is noteworthy here is the absence of the mention of brothers, who surely do not fit the dichotomy of sons – collateral relatives. We can explain this absence in two ways. Perhaps it is not the killed person who is in the center within this frame of reference but his sons as the heirs to and the main promoters of the feud. The first words of title LXII seem to corroborate this explanation: "If a father of somebody is killed" (*Si cuiuscumque pater occisus fuerit*). From the point of view of orphaned sons, the dead man's brothers were paternal uncles, that is, the closest secondary relatives on the father's side. In this case, however, the relatives on the mother's side, evidently treated equally with those on the father's side, would not be the dead man's relatives at all, but his in-laws. The equal treatment of the relatives and the in-laws of the victim in the division of the wergild does not seem too likely. Perhaps, the codifier resorted to a mental shortcut, and the sons represent here – in a *pars pro toto* manner – the closest family of the dead man, that is, also his brothers.

The first Capitulary added to the first edition of the Pact of the Salic law reveals more details. A norm precisely defining, and also modifying, the rules of the division of the wergild, was included in the Capitulary as title LXVIII of the law: "He who kills a freeman, and it is proved against him, should make composition to the relatives according to law. His [the dead man's] son (*filius*) should get half

178 LSax, XIX.

the composition. Half of the rest should go to the mother, so that one-fourth of the wergild comes to her. The other one-fourth should go to the near relatives, that is, to the three nearest on his [i.e., the dead man's] father's side and three on his mother's side (*parentibus propinquis* […]*, id est tres de generatione partis et tres de generatione matris*). If the mother is not living, the relatives should divide her half of the half-wergild among themselves, that is the three closest from the father's side and three from the mother's side; whoever is the closest relative of the aforementioned three shall take [two parts] and leave a third part to the other relative" (*ita tamen qui proximiores fuerint parentes de praedictis condicionibus prendant et tertia parte illis duabus dividendum dimittat; etiam de illis duabus ille, qui proximior fuerit, illa tertia parte duas partes prendant et tertia parte parenti suo dimittat*).

The appearance of the mother amongst those entitled to wergild was an innovation and occurred at the cost of secondary relatives who, according to title LXII of the original edition of the Salic law, had been entitled to a half of the wergild. Their share was diminished to one-fourth but reverted to one-half again if the mother was not alive. This circumstance, together with a lack of reference to the father, indicates that the father was certainly no longer alive, either. The woman who was introduced into the company of those participating in the division of the wergild was thus the widow. It was her husband and not her son who was the victim of murder.[179] The word *mater* meant her kinship to the son of the killed man who, amongst all the relatives entitled to the composition, was first on the list and received half of the wergild.

The appearance of the widow whittled away a part of the wergild meant for the secondary relatives, but it did not change the proportions according to which that part was divided amongst them. The source mentions three relatives on the father's side and three on the mother's as if three people were always at stake. Yet as the argument further reveals, these three people differed one from another in terms of the degree of kinship to the dead man, and, consequently, in terms of the amount of composition to which they were entitled. It is thus not about the number of people but about the group divided into three categories according to their degree of kinship to the victim. The dead man could, after all, have more than one uncle on the father's side. They all were the closest secondary relatives on the father's side and for this reason constituted one category receiving an

179 The same point has already been made by Brunner, *Sippe und Wergeld*, p. 138; see also Murray, for a similarly persuasive argument in his *Germanic Kinship*, p. 141; see also Phillpotts, *Kindred and Clan*, p. 69.

identical amount of the divided wergild. The same is true for the closest secondary maternal relatives, that is, the uncles on the mother's side, irrespective of how many of them there were. And finally, the same is also true for the sons. Because the source uses the singular noun form, it does not mean, after all, that the son of the killed man had to be an only son. Representing the categories of kinship in the singular form was an editorial simplification, a mental shortcut which did not mislead anyone in those times.

The passage relating to the division of the wergild amongst the different categories of secondary relatives has been convincingly explained by Heinrich Brunner and Alexander C. Murray. On both sides – the paternal and maternal – the first, that is, the nearest, category of relatives took two-thirds of the amount due; the second received two-thirds of the remaining amount while the third took the rest. The proportions were thus 6:2:1. In the oldest Norwegian, Icelandic, and Swedish laws these proportions varied, but a similar general rule of degression was applied; the more distant the relative, the proportionally smaller the share in the wergild.[180]

Tacitus writes that the composition is accepted by *universa domus*, which meant the relatives, but he did not specify the parameters of the group of relatives entitled to the composition. Title LXII of the Pact of the Salic law and the Capitulary supplementing it allow us to make better sense of the structure of that group. Admittedly, we are still unable to precisely determine who belonged to the third category of secondary relatives, that is, where exactly the terminus of the entitled group lay, but we already know quite a lot. Above all, there is no doubt that we are dealing with cognatic kinship, that is, a group that includes kin from both the distaff side and the spear side. This means that this is an open group. Its composition in relation to an individual was identical only from the perspective of blood brothers and sisters. More distant relatives belonged not to identical but intersecting kinship groups of the community.[181]

There is no doubt, however, that the group entitled to wergild and originally constituting a collective subject of the feud significantly exceeded the group of the household members. Maternal and paternal uncles were the closest collateral relatives. The mother's brother did not come from the same family home as his nephew, while the father's brother, since the grandfather's death and the division of legacy, had usually kept a separate house and thus had his own family and did not live in his nephew's house. Within one generation, paternal and maternal

180 Brunner, *Sippe und Wergeld*, p. 138f.; Murray, *Germanic Kinship*, p. 142f.; see also Phillpotts, *Kindred and Clan*, p. 266 and Hastrup, *Culture and History*, p. 87f.

181 Genzmer, *Die germanische Sippe*, p. 35; Hastrup, *Culture and History*, p. 70f.

cousins would always, or almost always, live in separate patriarchal families. This, therefore, is obviously also true in the case of more distant cousins. Thus a sizable group of relatives belonging not to one but to many different families was the feud party directly interested in the wergild.

We encounter this same group in title LVIII of the Salic law (*De chrenecruda*). This time, it is not about the acceptance but about the payment of wergild. If the killer surrendered all of his possessions, but they were insufficient to pay the amount due, then he had to swear an oath with eleven "oathhelpers" that:

> …neither above the earth nor below the earth does he have more property than he has already given. Afterwards he should enter his house and in his hand collect earth from its four corners, and then he should stand on the *duropello,* that is, on the threshold, looking into the house, and then with his left hand he should throw the earth over his shoulders onto him who is his nearest relative. If the father or brother have already paid for him [and the composition is still not fully paid], then he should throw the earth over the sister of his mother or her children; but if there are none of these, [he should throw the earth] over those three from the paternal and maternal kin who are next most nearly related [*quod si iam pater et frater solserunt, tunc super suos debet illa terra iactare, id est super tres de generatione matris et super tres de generatione patris, qui proximiores sunt*]. And afterwards without a shirt and barefoot, with stick in hand, he should go jump over his fence and those three from the maternal side shall pay half of whatever is the value of the composition or the judgment set; and those others who come from the paternal side should do the same [i.e., pay the other half].

Each of the relatives thus summoned to help could, however, refuse to do so in case of poverty, throwing, in turn, a handful of the earth over the richest of the line. But even the richest could evade the payment. If the relatives' help failed, then the person who was the creditor (*qui eum sub fidem habet*), that is, the main representative of the injured party (most probably the victim's heir) had to take the killer to the assembly four times and search for a guarantor (*illum, qui homicidium fecit* […] *in mallum presentare debet, et sic postea per quatuor mallos ad suam fidem tollant*). Only when "no one exercises the surety for him by paying the composition, that is, does not pay that which would redeem him, then he shall make composition with his life" (*de sua vita conponat*). This meant death at the hands of the avengers.

The structure of the kinship group assisting one of their own in the payment of the wergild is here identical to the structure of the group accepting the wergild for the murder of one of their own. The closest family of the killer constitutes the heart of the community: his father and his brothers who are presumed to have already paid what they could before they were forced to ask among the wider circle of relatives. This circle includes secondary relatives: three on the mother's side and three on the father's side. As A. C. Murray has rightly observed, title

LVIII does not talk about three people but three categories of people different from one another in terms of the degree of kinship.[182] A symmetry of obligations between the relatives on the distaff side and on the spear side is also visible here; it was expected that both would pay a half of the remaining part of the wergild.

What merits careful attention is the ritual language of gestures through which the legal act was performed. According to the Old Norse laws of the *Gulathing*, a similar ritual was requisite when selling the *odal*, that is, land that was inherited in a given family for at least three generations. The owner who was selling his *odal* had to "take mould, as is mentioned in the laws, from the four corners of the hearth [*at arenshoron fiorom* – which can be read as a metaphoric description of the home], and from underneath the host's high-seat, and from there where field and meadow meet, and where pasture and stone-ridge meet."[183] The ritual described in Title LVIII of the Salic law was also undoubtably related to the transfer of property; the former householder, throwing a handful of earth gathered from the house's four corners, dressed in a beggarly apparel, leaving the household over the fence, was thus relinquishing his right of patrimony for the sake of the relatives who were to help him pay the wergild. It does not seem likely that this symbolism has a secular pedigree. This is an unmistakably ritual act and hence conduct of sacred origin. Not without a reason did subsequent editions of the Salic law describe title LVIII as an obsolete relic of paganism (*De chrene cruda quod paganorum temporibus obsevabant*).

The archaic nature of the ritual does not, however, determine the archaic nature of the norm itself. *De chrenecruda* limited the traditional feud more than the already cited norms of the Frisian law or the Swedish *Wetgötalag*. The Salic law allowed for a bloody culmination of the feud only after the judicial procedure was exhausted, that is, after the killer had unsuccessfully appealed to his relatives and called, at four consecutive assemblies, for someone willing to vouch for him. Here there are no elements of a private war, such as escape, pursuit, and fight. Before the revenge took place, the killer had already been for some time in the hands of the people to whom he was unable to pay the entire wergild. They were the ones leading him to the assembly in search of a guarantor, and they were the ones who, when all attempts failed, finally killed the culprit. The act of revenge had the character of a private execution and did not jeopardize public order.

All this can be explained by means of circumstances. As Heinrich Brunner noted, title LVIII refers to a situation in which the parties involved in the feud

182 Murray, *Germanic Kinship*, pp. 145 and 149.

183 Gul, 292, p. 159.

had already reached an agreement, and part of the wergild had been paid. The remaining part was understood to be the victim's liability, and the injured party accepted his oath that he would settle the debt. This is how we can understand, in relation to title L (*De fides factas*), the words: *qui eum sub fidem habuit*.[184] In this situation the relatives of the killer were not liable to any danger. They were obliged to pay the remaining part of the wergild out of familial solidarity, but they were allowed to refuse to help without fear of punishment. They were not liable to revenge. Ultimately, only the killer "paid with his own life." The community was the subject of the feud yet, at least in this case, only an individual fell victim to revenge. Was this a common principle, an archetype of the feud in the legal tradition of the barbarian peoples?

When in chapter 74 of his edict Rothari enjoined the injured to accept composition rather than seek revenge, he also exhorted them not to harbor any underhand designs for revenge (*nec dolus teneatur*) after they had accepted the redemption.

Yet traditional attitudes did not abate readily, especially when murder and wergild were at stake. A telling example of this is chapter 143 of Rothari's edict (*Concerning the man who seeks revenge after accepting composition*): "If a free man […] is killed and composition paid for the homicide and oaths offered to avert the feud, and afterwards he who received the composition tries to avenge himself by killing a man belonging to the associates from whom he received the payment, we order that he repay the composition twofold to the relatives of the freeman […]" (*Si homo occisus fuerit* […] *et pro humicidio ipso conpositio facta fuerit et pro anpotandam inimicitia sacramenta prestita; et postea contegerit, ut ille, qui compositionem accepit, se vindicandi causa occiderit hominem de parte, de qua conpositionem accepit: iubemus, ut in dublum redat ipsam conpositionem iterum parentibus*).

The "associates" that paid the wergild are here evidently the same as the "relatives" to whom the oath-breaking avenger has to pay back the wergild (*iterum*) doubling the amount. This suggests that among the Lombards, it was not only the culprit but his entire kinship group that was the party to paying the wergild. The relatives' participation in the payment of the wergild was a rule in the eyes of the editor of the Edict, and hence a responsibility and not voluntary support extended to a relative in need.

What is more, the victim of the illicit revenge was described impersonally. It did not have to be the killer himself. It could also be any "man of the party"

184 Brunner, "Sippe und Wergeld," p. 149.

that paid the wergild accepted by the other party, including the avenger (*homo de parte, de qua conpositionem accepit*). Not only the killer, but also any of his relatives could fall victim to revenge. This was an illegitimate and punishable revenge, because it took place after the wergild had been accepted and the oath not to seek further revenge sworn. Thus such revenge was subject to punishment, yet not in the least because it was inflicted on an innocent person. Rothari did not care about who was killed in the act of oath-breaking revenge: the murderer or one of his relatives. In both cases, the avenger was subject to the same punishment (doubled wergild). If the other party had not paid the wergild and a reconciliation had not taken place, the same act would be legitimate. This means that the party liable to legitimate revenge was not only the killer himself but the community of his relatives.

This conclusion finds confirmation in two norms of the law of the Saxons. One concerns assassination and the other a murder committed by a slave.

The term "murder" (*morth, mordrid, mordtotum*) was used in Germanic customary laws to describe a secret homicide that involved the hiding or sinking of the dead body. An act like this made it impossible to perform the funerary rituals, and was thus considered not only a violation of the body but also a violation of the spirit of the victim. The tradition deeply ingrained in pagan beliefs demanded that this kind of crime be treated with the utmost severity. *Lex Salica* and *Lex Ribuaria* punished it with a triple wergild. For the crime of *morth*, Rothari's edict instituted a penalty of 900 solidi, while we know from elsewhere that the wergild for a free Lombard was from 150 to 300 solidi. According to the Pact of the Alemanni, the law of the Alemanni, and the law of the Frisians, the punishment for *mordrid* was ninefold wergild.[185] A ninefold wergild was also demanded in the law of the Saxons, but in this law we can read more details concerning the manner of payment: "If anyone commits murder, he is first to pay a single wergild according to the rank of the murdered; one-third of this penalty should be paid by the relatives of the murderer while he should pay two-thirds; moreover, he must also pay the eightfold of this amount and in this respect only he and his sons will be liable to feud" (*Si mordhtotum quis fecerit, conponatur primo in simplo iuxta conditionem suam; cuius multae pars tertia a proximis eius, qui facinus perpetravit, conponenda est, duae vero partes ab illo; et insuper octies ab eo conponatur et ille ac filii eius soli sint faidosi*).[186]

185 PLS XLI, 2 and 4; LL, Ro, chapter 4, p. 16 (see also Li, chapter 62, p. 158); PA1, LXXXII and LA1, XLIX; LFris, XX.

186 LSax, tit. XIX.

The short expression *conponatur novies* (pays ninefold) would have sufficed to determine the amount of the punishment. The law of the Saxons went further than this because the codifier wanted to characterize the difference between the two separate parts of the wergild for murder. The first of its two parts was a simple wergild (*in simplo*), paid according to routine principles: one-third as settlement by the murderer's secondary relatives (*proximi*), while two-thirds were paid by the closest family. This principle was applied to every act of homicide, but was not mentioned in titles XIV and XVI which dealt with the wergild of edelings and *laeti*, because it was self-evident. The relatives' duty to cover one-third of the wergild was noted in title XIX, since both parts of the wergild differed precisely in this respect. The murderer had to pay the second part, eight times higher, himself. Secondary relatives did not have to contribute to the payment of this massive amount and bear any consequences if the murderer did not manage to pay it. In such a case, "only he and his sons will be liable to feud."

The fact that the avengers had the right to kill, without fear of punishment, not only the murderer but also his sons was written down in black and white. But this is not the end of the matter. The sense of the formula *et ille ac filii eius soli sint faidosi* lies in its narrowing of the circle of people that the avengers were allowed to kill. This is linked to the preceding part of the sentence; the murderer must pay eightfold of the simple wergild himself without the assistance of more remote relatives. We can thus conclude that if the "simple" wergild was not paid *in simplo*, one-third of which had to be covered by the murderer's secondary relatives, these secondary relatives would be liable, together with the murderer and his household members, to revenge from the injured party.

Title XVIII of the law of the Saxons is devoted to the criminal responsibility of a master for a homicide committed by his *laetus*, or, to be more precise, to how a master can relieve himself of this responsibility: "If a *laetus* kills a man such as a noble by order of his master or at his instigation, he is subject to a wergild or feud; if, however, a *laetus* commits such a crime without his master's knowledge, he must be freed by his master and then the victim's relatives take revenge only on him [the killer] and his other seven relatives and the *laetus's* master must take an oath together with eleven oathhelpers that he was not privy to the crime" (*Litus si per iuissum vel consilium domini sui hominem occiderit, ut puta nobilem, dominus conpositionem persolvat vel faidam portet; si autem absque conscientia domini hoc fecerit, dimittatur a domino, et vindicetur in illo et aliis VII consanguineis eius a propinquis occisi, et dominus liti se in hoc conscium non esse cum XI iuret*).

How the Germanic peoples understood the *laetus's* dependence on his master is crucial to understanding this norm. The lowest class of freed men were called *laeti* in the laws of the Franks, Alemanni, Frisians, and Saxons. In the laws of

the Lombards, they were referred to as *aldii*. According to Rothari's edict, they were not *fulcfree* (entirely free). They had no right to depart or to manage their possessions. The master held the supreme right to their property and, characteristically, also familial guardianship (*mund*) over their daughters. Among the Frisians, it was the master and not the father or the brother of the girl who was liable to punishment if someone married a *laetus's* daughter without permission from the male guardian. The law of the Saxons, too, forbade the *laeti* to marry their daughters off without the master's consent.[187]

Unlike the slaves, the *laeti* enjoyed some personal rights, but their entitlements and judicial responsibility were in some situations considerably limited as a result of their subjection to the patriarchal authority of the master. Under title L of the law of the Saxons, the master was held responsible for all crimes committed by a *laetus* under the order of the master. In the case of a theft committed on his own initiative (title XXXVI), the *laetus* was himself responsible, and he himself had to pay a ninefold value of the property stolen to the wronged and four solidi as public punishment for violating the peace (*pro fredo*) to the fisc. While common free men paid six solidi in an analogous situation *pro fredo* and those of noble birth paid twelve, this stemmed from a conviction that the moral quality of a person corresponded to their birth and did not exempt people of lower status from judicial responsibility. Chapter 5 of Charles the Great's Saxon *Capitulary* states explicitly that the *laeti* can be summoned to court just as any free or noble person, though punishment for failing to appear at the court, similarly to the *fredus* for theft, was varied to suit one's social standing. The *laetus* paid one solidi and a common free man paid two, while a person of noble birth paid four.

Title XVIII of the law of the Saxons did not quite fit those clear rules since murder was a specific crime; it was an attack upon the kinship community and not merely upon one of its members. What is more, as we already know, the culprit's relatives were also called to account; they had to pay one-third of the wergild, otherwise they would be liable to feud. The first sentence of title XVIII seems, at first glance, a simple substantiation of the general rule written in title L: the master assumes criminal liability for any crimes committed by a *laetus* under the order of the master. Yet why did the master have to emancipate the *laetus* murderer to avoid criminal responsibility in those cases when he was not privy to the crime and proved it by swearing an oath? This meant that the master was held co-responsible for a murder committed by his *laetus* even when he knew nothing about the crime.

187 LL, Ro, chapters 224, 216 and 235; LFris, title IX, 13; LSax, title LXV.

This can only be explained by the special kind of bond between the *laetus* and his master. This bond was called *mund* and its primary understanding denoted relations of kinship. This word, or its Latin equivalent *tutela*, was used in the sources to describe the guardianship authority of a father over his under-age son, as well as the authority of the nearest male relative (the father, brother, and after marriage, the husband) over a woman. Yet all *munds* were not equal. A father's or brother's authority over an unmarried woman was more arbitrary than the authority of the dead husband's inheritor over the widow. A master was to live "as with his own brother or any of his free Lombard relatives" with the emancipated *fulcfree* on whom he had conferred complete freedom but did not make "a man without a *mund*, that is, a stranger to himself." A master's *mund* over the *laetus* was even more severe, although even in this case it was based on the relation of close kinship.

If a free Frisian was murdered, two-thirds of his wergild fell to his immediate inheritors, that is, to his closest family, while one-third belonged to the other relatives (*ad propinquos eius proximos*). If a *laetus* was the victim of a murder, then, under title XV, paragraph 3 of the Frisian law, two-thirds of the wergild fell to the master and one-third to the relatives of the killed (*propinqui occisi*). In matters regarding feud and the division of the wergild, the *laetus's* master acted as the closest relative, an equivalent to the heir in the family of a free man. It is obviously impossible to cast the master in the role of the son. On the contrary, it was the master who decided about the marriage of his *laetus's* daughters. A master's authority over the *laetus* was understood in terms similar to a father's *mund* over his under-age son. This is why he was entitled to two-thirds of the wergild and would play the leading role in a feud if someone killed his *laetus*. Yet there are two sides to the coin, as title XVIII of the Salic law suggests. If a *laetus* killed someone, even without his master's involvement and knowledge, everyone who was considered the killer's relative had to pay the wergild or risk revenge. And the master was first on this list. After all, in practice, only his means could be enough to cover the huge wergild of a Saxon nobleman. In order to not pay and to avoid the risk of revenge, the fatherly relation of the *mund* linking the master and the *laetus* had to be severed. The killer had to be freed completely and made, as was written in Rothari's edict, "*amund*, that is, a total stranger to [the former master]."

From then on, the *laetus* bore the consequences of his crime like any free man; the victim's relatives no longer had the right to take revenge on his former master but only on the culprit himself and his natural relatives. This is what the words pertaining to the feud meant: "on him [the killer] and his other seven relatives." Additionally, the law of the Saxons sheds some light on the structure of the kin group understood to be involved in a feud.

The reference to the killer's seven relatives represents a mental shortcut similar to the formula in the Salic law which, when speaking of the division of the wergild (or the assistance in its payment), mentions three paternal and three maternal relatives. What this reference meant, we will recall, was not the number of persons but an enumeration of the degree of kinship. According to the Saxon custom, the relatives of the killer up to the seventh degree were liable to feud. Heinrich Brunner interpreted title XIX of the law of the Saxons in this way, although he did not justify his view in detail. Perhaps this is the reason why subsequent scholars were led astray.[188]

Brunner probably took into consideration not only the Salic law, but also the Saxon sources much later than *Lex Saxonum*, including, in particular, *Sachsenspiegel*. Chapter I, paragraph 3 of this *Landrecht* begins with the promising announcement: "Now note how and where kinship begins and ends" (*Nun merke we ok, war diu sibbe beginne unde war siu ende*). Unfortunately, this source does not name any specific relatives apart from the closest family, but it describes the manner of counting and remembering the degrees of kinship adopted in the traditional illiterate culture.

Rather than using fingers to count they used subsequent joints in the arm leading to the middle finger. *Sachsenspiegel* represents the kinship community in terms of the human body, where the parents are the head, the children the neck and the nephews and nieces the shoulders. "These people are related in the very next level; that is, in the first degree of consanguinity. They are the children of brothers and sisters [*Dit is de erste sibbetale de men to mage reknet: bruder kind unde suster kind*]. The level of the elbow marks the second degree, the wrist the third, the first joint of the middle finger the fourth, the second joint the fifth, and the third joint the sixth. At the seventh level there is no joint; only a fingernail marks the degree and therefore the kinship ends with the nail members. Those persons between head and fingernail who stand at the same level of consanguinity share the inheritance in equal parts. The heir who can be placed closest to [the head of] the clan lays first claim to the estate."[189]

In this text, the terms *sibbe* and *mage* are similar in meaning, but not necessarily equivalent. *Mage* seems to be a general term, while *sibbe* has an institutional meaning; it refers to a clearly demarcated group, specific internal structure, and social function. The source defines *sibbe* in unmistakable relation to inheritance

188 Brunner, "Sippe und Wergeld," p. 115f.; see also Lintzel, "Zur altsächsischen Rechtsgeschichte," p. 422f.

189 SSp, I, 3, 3, pp. 74–76.

law. The chain of potential inheritors ended on the seventh degree of kinship and the inherited estate became the legacy.

We can find similar information in sources much older than the *Sachsenspiegel* and even preceding Saxon law. Chapter 153 of Rothari's edict, titled *De gradibus cognationum* ("On Degrees of Relationship") states: "All kinship should be counted to the seventh degree when determining what relative or heir should succeed through kinship and degree [*Omnis parentilla usque ad septimum geniculum nomeretur, ut parens parenti per gradum et parentillam heres succedat*]. And he who desires the succession must be able to give the names of all his related ancestors. If the litigation should be brought against the royal court, he who seeks the inheritance may offer oath with his legitimate oathhelpers to this effect: the deceased is our kinsman and we are related to him in the following manner."

A case that a claimant to a legacy might bring against the royal court, that is, the organizational unit handling the monarch's property, on this basis could be linked with the so-called escheat. The officials attached such disputed property to the king's estate as legacy to which, in the absence of heirs to the seventh degree of kinship, the king was entitled.[190] A claimant putting forward a claim based on his kinship to the deceased had to prove that this kinship was within the bounds of the seven-degree scale. The similarity to *Sachsenspiegel* seems obvious here. The arrangement of terms, notions, and symbols is also similar. The Latin expression *numerare genicula* (to count knees) was used in Rothari's edict for counting the degrees of kinship. Such counting was described in the same manner, though in the native tongue, in medieval Iceland: *telja knérunna*.[191] Landrecht made use of a more general term *lede* (joints, wrists), revealing thereby the affinity of this terminology to the archaic way of counting the degrees of kinship on successive bends of the hand and fingers.

The term *parentilla* in Rothari's edict and the term *sibbe* in *Sachsenspiegel* had similar connotations. In both cases they referred to a group ordered into seven degrees of kinship and treated as the circle of potential inheritors. We should not create too far-fetched generalizations out of these similarities. Over the time that separated these two sources, the social context of the word *sippe* (clan, kin) and its Latin equivalent could and even must have undergone significant changes. The appearance of the term *parentilla* in very similar contexts in both Rothari's

190 This principle was explicitly formulated in the law of the Bavarians (LBaiuv, XV, 10): "But if the husband and wife die without heirs, and no one is found even to the seventh degree, and they do not have any relatives at all, then let the public treasury acquire these properties."

191 Hastrup, *Culture and History*, p. 78.

edict and the Salic law is more significant than the similarity to the thirteenth-century Landrecht.

Title XLIV of the Salic law defines the order of the claimants to the so-called "betrothal fee" or "ring payment" (*reipus*) which, upon a widow's re-marriage, the bridegroom had to pay to one of the relatives. This was not about the purchase of the *mund* since the guardianship authority over the widow belonged to the heirs of her late husband. *Reipus*, on the other hand, could not be given to anyone who inherited the late husband's legacy. In fact, the betrothal fee had to be paid to one of the widow's relatives: her nephew, her niece's son, the son of her maternal aunt or her mother's brother. There is no stipulation that they may only take the *reipus* if they do not inherit since it would be groundless. The deceased was not their relative but their in-law, and so they could not inherit from him.[192]

Only when there were no relatives of the widow in question could the *reipus* fall to the deceased husband's brother – under the condition that he did not inherit his legacy (*si in hereditatem non est venturus*). "And if there is no brother, then he who is closest up to the sixth knee [degree] after those named above [*qui proximior fuerit extra superiores nominatos, qui singillatim secundum parentilla dicti sunt, usque ad sextum genuculum*] who are named individually according to the degree of their kinship, if he has not come into the inheritance of the dead husband, shall receive the betrothal fee. If moreover there is no relative within the six degrees, the betrothal fee or [the proceeds of] any suit that has arisen from it shall be collected by the fisc."

The reference to "he who is closest in kinship" links logically with the words "up to the sixth knee [degree] after those named above." The reservation that he "who is closest in kinship" receives *reipus* under the condition that he does not inherit from the dead husband, allows us to characterize the entire group as a group of potential inheritors from the dead husband, ordered one after another according to the degree of kinship with the deceased. The similarity with chapter 153 of Rothari's edict is obvious. In both sources, the group of relatives entitled to inheritance comes under the name of *parentilla*, while the word *geniculum* means the degree of kinship. Both sources lay down a condition that the claimant to the inheritance or the husband's relative seeking *reipus* name one after another his ancestors and cousins demonstrating thereby their degree of kinship with the deceased. While it is true that Rothari's edict mentions six and the Salic law seven degrees, this may very well be an apparent difference stemming from a different manner of counting. The cited passage from *De reipus* takes into account

192 Brunner, "Zu Lex Salica," tit. 44, p. 165f.

neither the deceased's sons nor his brothers. It starts with the words *et si nec ipse frater fuerit* ("but if the brother is not alive"), and so it is possible that the six-degree scale of kinship that is being used here did not include the closest family. In this case, the chain of potential inheritors would consist among the Salian Franks, as among the Lombards and the Bavarians, of seven degrees.

The term *parentilla* appears again in title LX of the Salic law: "He who wishes to remove himself from his kin group [*parentilla*] should go before the *mallus* and there in the presence of the *thunginus* or hundredman break four sticks of alder wood over his head and throw them in four bundles into the four corners of the assembly place and say there that he removes himself from their oathhelping, from their inheritance, and from any relationship with his kin [*quod se de iuramento et de hereditatem et de totam rationem illorum tollat*]. If afterward one of his relatives dies or is killed, none of that one's inheritance or composition will belong to him. If he [who removed himself from the *parentilla*] dies or is killed, the claim for his wergild or inheritance will not belong to his relatives but to the fisc […]."

The norm concerning the gestures which accompany this declaration is very detailed, beginning, as it does, with the requirement that the sticks are alder wood and that they have to be broken over the head. Each detail was of great importance here. The ritual gestures were as important as the words. The verbal declaration acquired legal authority thanks to the ritual which was a non-verbal statement addressed to supernatural powers. These powers evidently sanctioned the bond which was being severed. The term *parentilla*, or, to be more precise, its Germanic archetype, was not, therefore, a common term of kinship relationship. It was a name for the social group on which the pagan tradition conferred a sacred dimension. All the rights and obligations linked with inheritance, feud, wergild, and common oath and named in title LX of the Salic law refer to this collective subject.

Apart from this general conclusion, specific and no doubt extremely significant matters remain unresolved. We still do not know who belonged to the specific degrees of kinship. The chain of inheritors in the Salic law consisted of six or seven links, while paternal and maternal secondary relatives up to the third degree participated in the feud and wergild. Is this information coincidental but only written down differently, or was, perhaps, the group of people entitled to inheritance wider than the group of those participating in the feud? What was the place of illegitimate sons and daughters in kinship matters? We know that under the pressure of the Church significant changes were taking place in this area,[193] but the mutual influence of barbarian traditions and the cultural models promoted by the Church

193 Pieniądz-Skrzypczak, "Konkubinat," pp. 354–357.

took different shapes in different countries. The information offered by early medieval sources on blood kinships in the barbarian world is scant and ambiguous. For aid in their interpretation we can turn to the Scandinavian laws. While these laws were written down in the 12th and 13th centuries, they were written outside of the realm of Roman succession and in countries that were Christianized later and were much less exposed to the influence of classical culture.

When it comes to wergild, the Icelandic *Grágás* of the early 12th century, the twelfth-century codes of local Norwegian laws (the *Frostathingsbók* and *Gulathingsbók*), and the Swedish *Westgötalag* of the first half of the 13th century clung to a shared principle; part of the wergild was paid by the killer and his closest family while the other part was paid by his fellow clansmen. Here, the closer the degree of kinship was to the killer, the greater was each fellow's contribution.

Westgötalag assigns two separate names to the two parts of the wergild: "If they [the victim's relatives] are willing to accept the wergild, then 9 *arvabot* Marks and 12 *aettarbot* Marks must be paid to them." *Arvabot*, or the "payment for the heir," was paid to the victim's heir (or heirs) most probably by the killer himself. *Aettarbot* – literally "payment for the clan" (aett) – had to be paid to the wider group of the victim's relatives from the equivalent group of the killer's relatives. Half of the *aettarbot*, that is, 6 Marks, had to be paid by the killer's heir (or heirs); the other half was paid by the killer's fellow clansmen. Here, 3 Marks had to be paid by his maternal relatives and the other 3 by his paternal relatives.

> The closest of them has to pay 12 öre, the next in terms of degree of kinship pays 6 öre, the next – 3 öre […]. In this way, everyone pays and everyone receives the wergild, each getting an amount by half smaller than that of the previous man. The wergild has to be divided up to the sixth degree of kinship [literally: up to the sixth man – *til saete mans*]. If they are related in the same degree, then one relative [*kolderi*] has to take exactly the same amount as the other relative. The victim's heir must take 6 Marks of the *aettarbot*, while the clan (aett) must take the other 6 Marks – 3 for the paternal relatives and 3 for the maternal relatives.[194]

The secondary relatives' contribution (or participation) used up, as can be seen, six Marks of the *aettarbot*. The place for the nearest family – sons, brothers and father – has to be found elsewhere. They were concealed behind the term "heirs." The norm of the oldest Vestrogothic law thus reveals the dyadic structure of the clan. The closest family constituted the heart of the clan. This was the household community and came from a shared house (sons, brothers, father; since we are dealing here with potential avengers, they are all men). This was the first group

194 WgL, Af mandrapi, 1, pargraphs 4 and 5.

of kinship beyond which there was a much wider community of secondary relatives, both paternal and maternal, ordered into six categories according to the degree of kinship to the given protagonist, that is, the killer or the victim of homicide, the one who must give up his legacy and the one whose legacy is intact.

In the giving and receiving of wergild a principle of symmetry was maintained. Two groups of identical structure were the parties participating in reconciliation. Each category of relatives received the same amount of compensation that was paid by its counterpart on the opposing side. This principle also was held in the Norwegian laws of the *Frostathing* and *Gulathing*. According to them, each of the killer's relatives up to the sixth degree of kinship was to pay the part of wergild that fell to him to his counterpart of the opposite party. The culprit himself and his son paid the son of the killed man; the brother paid the victim's brother; the paternal uncle paid the paternal uncle, etc.[195]

The Icelandic *Grágás* treats the relationship between the two parties involved in a feud in a similar way. This source allows us to decipher the structure of the clan, as it lists the people included in each of the circles of kinship, and gives the amounts of wergild each of these circles had to pay (the so-called *lögbaugar*, i.e., the "rings of law").

The first ring and what was called the main one (*höfuðbaugr*) had a value of 3 Marks. A composition of this amount was due to the victim's father, sons, and brothers and had to be paid by the killer's father, sons, and brothers. The second ring (2.5 Marks) was received by "the father's father, son's son, mother's father, and daughter's son" from their counterparts in the killer's clan. The third ring (2 Marks) was given to the father's brother, maternal and paternal nephew, and mother's brother of the victim from "those who were related in the same degree" to the killer. The fourth ring (1,5 Marks) went to maternal and paternal male cousins (*braedrungr*), and it was paid by those who were related to the killer "in the same degree."

Besides the sharers or payers of the four rings, *Grágás* also names three other categories of secondary relatives: *naesta braeðra* ("closest cousins"), *annara braeðra* ("second cousins"), and *thridja braeðra* ("third cousins"). Three sub-groups were placed among these categories. They did not have their own names but were described as "people more distant than the *braeðrungar,*" "people more distant than the *annara braeðra*" and "people more distant than *thridja braeðra.*" The more remote the degree of kinship, the smaller the amount of wergild due; the *braeðrungar* received and had to share 1.5 Marks, while the *thridja braeðra* were given only

195 Frost., VI, 3, 7, 8, p. 184 nn.; Gul, 222–224, pp. 130 ff.

one-eighth of a Mark.[196] They were in the tenth position, but the Icelanders described their position as the fifth degree of kinship. This is confirmed in the Christian ban on marriages between relatives: the ban applying, according to *Grágás*, up to the fifth degree of kinship, that is, to the *thridja braeðra*.[197]

Kirsten Hastrup has convincingly explained this paradox – we are dealing here with a manner of counting degrees of kinship within the same generation. For the individual, to whom the whole arrangement conceptually referred, it was the brother who was his nearest relative within this generation; the second degree of kinship included maternal and paternal nephews; their maternal and paternal cousins were, in turn, third-degree relatives in relation to the individual in relation to whom the counting was performed, etc. Using Old-Icelandic terminology, the order of the degrees of kinship was as follows: *braeðr* (that is, a brother), *braeðrungar*, *naesta braeðra*, *annarra braeðra*, *thridja braeðra*.[198]

The same categories can be defined in relation to common ancestors. The father was obviously a common relative for brothers; paternal cousins naturally had a common grandfather; the third degree of kinship assumed a common great grandfather; etc. This is how degrees of kinship were distinguished among the Slavs, at any rate in Poland, as is testified by the case of the family of Piroszowice described in the *Book of Henryków*.[199]

Can we assume the picture of the Old-Icelandic kinship community conveyed in *Grágás* to be authoritative for the traditional social order of other Germanic peoples? In terms of details – certainly not, but in terms of a general shape – yes. In the laws of the *Frostathing*, otherwise closest to the normative system of the Icelanders, the participation in the wergild and the ban on marriage extended not to five, but to six degrees of kinship. Among the Salian Franks, the amount of wergild that fell to the secondary relatives was divided among the nearer and more distant categories in the proportion of 6:2:1; in the Vestrogothic Sweden,

196 Grágás, vol. I a, IV, 113, p. 193f.

197 Grágás, vol. I a, *Kristinna laga*, 18.

198 Hastrup, *Culture and History*, pp. 76–89.

199 *The Book of Henryków*, p. 135. The case concerned the Bukowina forest, once given to Głąb by Bolesław I the Tall, most probably for the purposes of clearing. The Henryków monastery purchased the forest "through," and in fact most probably from, Kwiecik who was Głąb's grandson. The clan of the Piroszowice lodged then an effective court claim based on the law of propinquity. They claimed that "the old Głąb was our grandfather Pirosz's blood brother" (*quia antiquus Glambo erat frater uterinus avi nostri Pyrosonis*). The Piroszowice were thus a relative of third degree in relation to Kwiecik, that is, the equivalent of the Icelandic *naesta braeðra*.

the amount to be divided got smaller by one-half as one moved from one category to the next; in Iceland, as well as in the laws of *Frostathing*, it got smaller by roughly one-third. Here, the degression rate was 3:2. All these differences, however, seem to be variations of a common model.

Grágás reveals the way in which the degrees of kinship were understood in the culture of the Germanic tribes, and also possibly of the Slavic tribes. Thanks to this, we can form an opinion about the size and structure of the kinship community. It was a very large group, many times exceeding the size of what in romantic and evolutionary historiography has come to be called a "big family." We could, therefore, use the term "clan" under the condition that we free it from the burden of misleading associations.

The so-called "agnatic clan," deriving from a common male ancestor and constituting a closed group related on the spear side, is nowadays considered, not without reason, a myth of nineteenth-century historiography. The clan we are in fact dealing with in the barbarian laws was a cognatic community, based on kinship bonds through both the male and female sides. Felix Genzmer draws our attention to the weighty consequences of this arrangement. Each person could precisely define the make-up of the cognatic clan, yet for nearly each of the relatives (apart from blood brothers and sisters) this make-up was slightly different. The clans intermarried with one another, and even though each time they were (*pro tem*, we might say) clearly defined structures, they were not closed-off groups. They could not, therefore, have a stable one-person leadership or a group of elders acknowledged by all. And yet, Genzmer's and Karl Kroeschell's conclusion that the clans purportedly had no legal subjectivity seems a projection of modern legal notions and does not correspond to the sources. When wergild, feud, a dispute over priority in acquiring a legacy based on the law of propinquity, or at times, even a collective oath were at stake, the individual functioned as an element of the clan, and only within its realm could he exercise his rights and perform various duties.[200] Despite Genzmer's arguments, wergild and feud constituted two sides of the same coin. Rothari's edict reveals, incidentally, that an oath ending the feud was sworn along with the acceptance of the composition. Also in *Grágás*, the victim's relatives accepting their due part of the wergild had to swear an oath of peace (*trygðir*) before their counterparts – the killer's relatives who paid the wergild. After the composition was accepted and the oath of peace sworn, any act of revenge was treated by both the Lombards and Icelanders as a crime subject to double punishment.[201]

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200 Genzmer, "Die Germanische Sippe;" Kroeschell, "Die Sippe;" see also, Schlesinger's rejoinder, "Randbemerkungen."

201 LL, Ro, chapter 143, p. 40; Grágás, vol. I a, IV, 114, p. 204f.

The payment of the wergild together with the inseparable oath constituted, therefore, an act of reconciliation between the two parties of the feud. *Westgötalag*, *Frostathingsbók*, *Gulathingsbóok*, and *Grágás* do not leave a shadow of doubt that the two parties which reconciled through wergild were two kinship groups of identical structure. An irresistible conclusion emerges here. These groups had to be – at least up to a certain point – also the two parties of the feud and possible revenge. That is why chapter 143 of Rothari's edict mentions revenge taken not necessarily on the killer himself, but on anyone "from the associates from whom he [the avenger] received the payment."

The Scandinavian codifications upheld the traditional norms concerning wergild but considerably limited the feud; according to *Westgötalag*, only the killer himself, forced to hide in the forest, was the object of the feud, while only the victim's heir or the relative who brought the charge of murder at the assembly was a legitimate avenger. In the introduction to the *Frostathing* law, however, "a gross abuse" is mentioned that had been long practiced in the land. In case of murder, the victim's relatives took revenge on the person who was "the best" (*er beztr*) in the killer's clan. The editor of the book of *Frostathing* remarked that in this way "we have been losing the best people in our country." That is why it was established that revenge taken on anyone other than the killer himself would be punished with confiscation of property and the avenger's exile.[202]

This may be a vague reminiscence of old practices, but we should not disregard what this punishment for revenge taken on the fellow clansmen of the killer tells us. We can see the creation of such a ban on this sort of revenge and the introduction of punishment for it in Anglo-Saxon law-making of the middle of the 10th century. I am speaking here about King Edmund's edict issued between 943 and 946. It starts with a declaration of intent: "Together with my witan [meeting of "wise men"] – the laymen and the clergy – I have been thinking about how I could best strengthen Christianity" (*hu ic maehte Cristendomes maest araeran*). What in particular worried the king and his counsellors were "all unjust quarrels," so they decided as follows:

> From now on [*heonanforð*], if a person commits murder, let the murderer himself be subject to the feud [*he wege sylf ða faehthe*], if, within the subsequent twelve months and with the help of his relatives, he fails to pay the full wergild adequate to the victim's birth [that is, his social standing]. If his clan abandons him and refuses to pay for him then I want the entire clan, except the murderer, to be outside the reach of the feud if, from then on, the relatives give him neither food nor shelter [*wille ic, ðaet eall seo maegð sy unfah, butan ðam handdaedan, gif hy him syððan ne doðmete ne munde*].

202 Frost., Inlaedindg, 8, p. 123.

> Yet if a relative of his later gives him shelter, then let this relative's entire property be given to the king and let him be liable to revenge from the victim's clan since he had previously disavowed him [the killer, to whom, despite his promise, he had rendered aid].
>
> If any person from the other clan [the victim's clan] takes revenge on any other person than the killer himself, let him be the king's and all his friends' enemy and let him lose everything he has got.[203]

There is no doubt that these norms significantly altered the legal tradition that until then had been binding. Edmund strongly emphasized this several times – starting with the initial declaration about the institution of Christian principles in matters to which the edict pertained, through the unambiguous statement that "from now on" only the killer should be liable to feud, to the new principle introduced through the king's act (*đonne wille ic, đaet…*) that the entire clan, if it disavows the killer and does not provide him with shelter, should remain outside the reach of the feud, even though they did not pay the wergild. What can be inferred from this is that until that time "the entire clan" of the killer (*eall seo maegđ*) was liable to the feud at the hands of the wronged party if they did not pay the wergild. Accordingly, the killing of any member of the killer's clan had been previously considered an act of legitimate revenge and was not subject to punishment. The eradication of that ancient custom must have been extremely difficult, and this is probably why the king decided that it was not enough to simply abolish the rule of the avenger's exemption from punishment and subject him, like any other killer, to court procedures, feud, and reconciliation through wergild. Edmund's edict instituted draconian punishment for taking revenge on the innocent relatives of the culprit. Exile, that is, outlawry, banishment from the company of people, becoming a subject of revenge from the king and "all his friends," together with the complete confiscation of one's property was a punishment that was reserved for the most heinous of crimes and could not be compensated. A similar punishment is mentioned in the introduction to the laws of the *Frostathing*. The royal power and the Church had to take drastic measures in order to impose the principle of individual responsibility on their traditional societies.

3. Collective Guilt, Collective Honor, and Collective Oath

The knowledge about feud and reconciliation that we have garnered from the many sources can be seen as fragments gathered from different parts of barbarian

203 Liebermann, GA, vol. I, pp. 186–188.

Europe. If we were to interpret each of these fragments in isolation from the others, the result would be meager. To arrange these fragments into a sensible picture entails undertaking the risks inherent in the joint interpretation of sources that concern different peoples. In my opinion, the information we find in Rothari's edict, in the law of the Saxons, in the oldest written Scandinavian, Icelandic, and Swedish law codes, and in Edmund's second edict is similar enough to risk a generalization. Group conflict in which the clan of the victim confronted the clan of the killer was the archetype of feud in the legal tradition of barbarian peoples.

This phenomenon went considerably beyond the solidarity with one's relatives we find in our culture today. It entailed concepts of group subjectivity and an understanding of an individual's relation to his or her own group that are characteristic of traditional cultures. We can infer from the regulations concerning the feud and wergild that murder was treated as a blow dealt to the victim's clan by the killer's clan. Not only household members and the close family were wronged, but also more distant cousins up to the fifth, sixth, or seventh degree of kinship. All of them suffered this loss and affront, so if the other party did not pay the wergild, the clan's collective honor required that the loss be recouped through revenge and the insult cleansed with the enemy's blood. The wergild was paid by the killer's entire clan. Otherwise, legitimate and unpunished revenge could be inflicted both on the killer himself and on any member of his clan. The clan was held responsible for an individual's deed.

Nowadays, collective guilt is no longer part of the accepted canon of European culture. Irrespective of whether this canon, in theory indisputable, is or is not applicable in practice in contemporary times, a historian cannot project it onto the past. We will not understand anything about the traditional cultures of barbarian Europe if we fail to see the collective character of their moral norms. It is worthwhile to look again at title LX of the Salic law in which the man who severed his bond with his clan solemnly swore to relinquish his rights to inheritance, wergild, and oath.

Oathhelping was treated as one of the most important attributes of clan community. When standing trial, everyone could count on the unswerving support of the oath taken by the others in his clan. And *vice versa*: everyone was obliged to stand at the side of any other clan member and take an oath together with him. In the laws of the barbarian peoples an oath sworn by a number of oathtakers adequate to the seriousness of a given case was in itself considered evidence. Those swearing the oath were not witnesses. They did not testify, but through the sacred act of collective oath they in a sense "blindly" guaranteed that the man standing trial was truthful. They linked their own credibility with that of the accused.

We should not make light of this act. The perjurer incurred not only worldly punishment but also punishment from terrifying supernatural powers. According to the law of the Saxons, a man who unwittingly committed perjury (*qui nesciens periuraverit*), could "redeem his hand" (*manum suam redimat auctor sacramenti*).[204] This allows us to assume that the same deed perpetrated deliberately was punished by chopping off the hand of the guilty. But apart from such worldly punishment, the perjurer also had to face the vengeance of the supernatural forces to whom the words of the oath were addressed. In title VIII of the law of the Saxons, we find the oath on one's weapons (*sua arma iuret*) so popular in the Germanic world. The words of the pagan oath taken by Sviatoslav and his fellows, and recorded in the Russo-Byzantine treaty of 971 reveal the meaning of this ritual: "If we fail to carry out any of these [resolutions], I and those who are with me and under me, let us be damned by the god we believe in, Perun and in Veles, the god of cattle, and let us be golden like gold [i.e., afflicted with jaundice] and let us be cut to death by our own weapon" (*da iměem kljatvu ot boga, v jego že věruem v Peruna i v Volosa, skot'ja boga, i da budem zoloti jako zoloto, i svoim oružžem da iseče̋ni budem*).[205]

The gods summoned to act as guarantors of the oath were thus expected to pursue and wreak their wrath upon the oathbreaker. The transformation from divine protection to divine damnation made everything that was dear to him turn against him: his own sword, his own relatives, his own *laetus*. The prospect of a god's curse filled the pagans with utter horror. The well-informed Helmold notices that the Slavs found it difficult to decide upon an oath because if they happened to break it, they feared "the avenging wrath of the gods" (*iuraciones dificillime admittitur, nam iurare apud Slavos quasi periurare est ob vindicem deorum iram*).[206]

Given such serious treatment of the oath in the barbarian world, it is easier to understand why the obligation to swear a collective oath constituted a significant dimension of blood kinship. It was not only that credibility and honor were considered to be collective attributes. The kinship community stood together before the pagan *sacrum*. When the clan exonerated itself from the accusation that one of its members committed murder through a collective oath, the principle of collective responsibility was linked with their belief in the collective honor

204 LSax, title XXII.

205 PVL, vol. I, p. 52. This text, related by the chronicle, is neither the chronicler's confabulation nor a record of the oral tradition, but an Old Russian translation of the Greek original of the treatise. On the interpretation of the text of the oath, see Gieysztor, *Mitologia*, p. 112f.

206 Helmold, I, 84, p. 160.

and credibility of the group. But the collective oath was also sworn in matters of lesser importance. Translating this tangle of concepts in categories of contemporary culture, we can say that in the act of oath swearing, the kin group behaved in a sense similarly to how they behaved in the case of the feud, the payment of wergild, and the reconciliation of the parties involved where the killer's clan and the victim's clan were treated as collective moral subjects: one side was guilty while the other was injured.

This was not a secular morality. It was not without reason that King Edmund declared in the introduction to his edict of 943–946 that it was in order to strengthen Christianity that he forbade revenge on the relatives of killers. Both the ruler himself and, particularly, the clergy participating in his witan regarding the Christianization of the law (*hu ic maehte Christendomes maest araeran*) evidently realized that the collectively held belief in communal guilt was inextricably linked with the pagan outlook on life. As can be gathered from the solemn introductory declaration, they treated the eradication of the legal norms that reflected that outlook as if it were a missionary task. In its encounters with the collective tradition of the barbarian peoples, Christianity was thus the carrier of the individualistic models of classical cultures.

The ban on taking revenge on members of the clan of the guilty party appeared much earlier among the Burgundians than it did with the Anglo-Saxons. In his codification of 517, King Sigismund stipulated that "the relatives of the man killed must recognize that no one must be pursued except the killer; because just as we have ordered the criminals to be destroyed, so we will suffer the innocent to sustain no injury" (*quia sicut criminosum iubemus extingui, ita nihil molestiae patimur innocentem*).[207] While this prohibition obviously indicates that a practice at variance with it surely existed, the choice of evaluative expressions also merits attention. It is only the killer who is responsible for the murder; a member of the killer's clan is an innocent man. The king's codifier uses a conceptual system that excludes the category of collective guilt and, as a consequence, does not allow for collective responsibility. Such rhetoric apparently worked for the Burgundians who had been settled among the Romans since the middle of the 5th century and lived with them as allies of the empire. In the Anglo-Saxon kingdoms, amongst the Scandinavian peoples, as well as among the Lombards and the Saxons, the eradication of collectivist traditions linked with how guilt and punishment were understood required a longer time and a more cautious approach.

207 LC, II, 7.

Comparative analysis allows us to grasp the directions of the changes the legal traditions of the barbarian peoples underwent under pressure from the monarchy and the Church. The principle of the priority of revenge over wergild, explicitly expressed in the *Short Russkaya Pravda*, and the custom of taking revenge on the killer's fellow clansmen, still binding in Rothari's edict and the law of the Saxons, were still recognized at the dawn of statehood. It seems that the state and the Church managed to first prioritize wergild over revenge before they individualized the feud.[208] The norms of customary law constituted a part of the traditional culture, and they did not yield easily under administrative pressure. Parchment was patient. In life, the successful eradication of revenge on the entire clan of the killer became more and more feasible as the idea of the collective moral subject gave way to the notion of individual guilt. It was a long process, and at its end was the maxim written down before the middle of the 7th century in the Visigothic *Liber iudiciorum* (*The Visigothic Code*): "only he who committed a crime is guilty of it."[209] This was a negation of the ancient tradition of barbarian collectivism, a revolutionary idea, one that the rulers of the deeply Romanized Visigoths and Burgundians could entertain much earlier than the Anglo-Saxon, Norwegian, or Swedish kings.

4. Women under Men's Authority

Revenge was a man's business. Seen through the lens of the feud, revenge, wergild, and reconciliation, the cognatic clan emerges as a masculine community.

208 Only the Burgundian *Liber Constitutionum* went in the opposite direction, departing from wergild (despite the existence of customary amounts of wergild) in favor of the principle "death for death." It simultaneously prohibited revenge on anyone except the killer himself (LC, II, 1, 2 and 7). Among the Anglo-Saxons, on the other hand, from the moment the killer's relatives guaranteed the payment of the wergild, royal peace (*cyninges mund*) between the feuding clans was obligatory and both parties had to swear on arms that they would not break it. After three weeks from that day, *halsfang* (one-tenth of the wergild) had to be paid to the relatives of the victim, and later all the remaining instalments. The right to revenge was thus suspended for one year. Edmund's edict did not change the schedule of payment, but only introduced the individualization of the feud and allowed the members of the killer's clan to renounce him and avoid the payment of the wergild (Liebermann, GA, vol. I, pp. 190 and 393).

209 LVisig., VI, 1, 7: *Omnia crimina suos sequantur auctores, nec pater pro filio, nec filius pro patre, nec uxor pro marito, nec maritus pro uxore, nec frater pro fratre, nec vicinus pro vicino, nec propincus pro propinquo ullam calumniam permittescat; sed ille solus iudicetur culpabilis, qui culpanda conmitit*.

This is, obviously, a distorted image. In reality, women held a significant and very unique position in the family and clan structures; they remained under the guardianship of men who treated their authority over women as a matter of honor. An assault on their inviolability was an exceptionally grave insult to a man. This is perhaps the reason why, in the laws of the Alemanni, the Bavarians, and the Lombards, a free woman's wergild was higher than a man's.[210]

The principle of male authority over women was most clearly formulated in chapter 204 of Rothari's edict which has been cited and discussed earlier in this work. The authority (*potestas*) of male relatives over free female Lombards was designated by the Germanic word *mund*. This was both a common word which literally meant care (guardianship) and a legal term. It was the term for the authority over dependant members of the family. *Mund* derived from paternal authority over under-age children.[211] While the sons acquired the subjectivity of a free fellow tribesman and warrior[212] when they came of age, women remained under their father's *mund* even after they came of age, and, in the case of his death, under their brother's or any male relative's *mund*. When they got married, they were under their husband's *mund*, and if they were widowed, under their late husband's heirs.

A condition for marriage was the bridegroom's purchase of the *mund* over his future wife. The acceptance of payment for the *mund* meant that the male relatives – the bride's guardians – consented to the marriage. On the basis of this transaction, the ceremony of handing the girl over to the husband was performed (*traditio per manus*). This pre-Christian ceremony was still practiced alongside the Church wedding after Christianization and was even considered an indispensable condition for the legitimacy of the marriage. Legitimate sons were described in the twelfth-century Norwegian laws as those "whose mother was bought for the *mund*" (for the price of the *mund*), while an illegitimate

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210 Among the Alemanni, (PA1, tit. 77–81 and LA1, tit. 69, 3), a woman's wergild was two times higher than a man's; among the Lombards (LL, Ro, chapter 201) the punishment for killing a free woman was 1200 solidi, half of which was to be paid to the king and the other half to the *mundoald* (her guardian), while a free man's wergild was between 150–300 solidi (LL, Li, chapter 62).

211 See, LA1, tit. LI.

212 Tacitus, *Germania*, chapter 13, describes a young man's initiation at the assembly where he was given a spear and a shield, and comments on this in Roman terms: "This is their toga, this the first honor of youth; before this they seem part of the household, afterwards part of the citizen body" (*ante hoc domus pars videntur, mox rei publicae*).

son could become a fully legitimate heir through a ritual of adoption "as if his mother had been bought for the *mund*" (*mundi keypt*).[213]

This allows us to better understand the formulation of the Carolingian law of the Saxons which represents nuptials as an act of purchase and sale: "He who wishes to marry a widow has to suggest the price of her purchase to her guardian" (*offerat tutori pretium emptionis eius*); "he who kidnaps a woman betrothed to another, has to pay 300 solidi of composition to the woman's father and 300 to her fiancé and buy her, moreover, for 300 solidi" (*et insuper 300 solidis emat eam*); "the king's *laetus* has the right to buy himself a wife, wherever he wishes, but he has no right to sell any woman" [i.e., to marry her off lawlessly]. Also the oldest Anglo-Saxon codification – Aethelbert of Kent's law – describes marriage as the purchase of a girl and gives the price at which a wife could be bought.[214] These expressions should not be understood literally. Admittedly, a free woman was a dependant being, but she had legal subjectivity. It is not the wife herself who was bought but her guardianship, that is, the *mund*.

In the Scandinavian and Lombard sources, both the *mund* and the price of its purchase were at times described with the same word. That is why, the expression *mundi keypt* ("bought for the *mund*") meant a legitimate wife in the *Gulatingsbók* and *Frostathingbók*. Usually, however, the price paid for the purchase of the *mund* had its own distinct name: *pretium nuptiale* or *wittimon* among the Burgundians, *weotuma* among the Anglo-Saxons, or *meta* or *metfio* among the Lombards. The *mund* was passed from hand to hand also through inheritance, so a woman always had some guardian who was called a *mundbora* among the Anglo-Saxons or a *mundoald* among the Lombards. The Saxon, Frisian, and Thuringian law codes used the Latin term *tutor* for the guardian. In the event of the husband's death, the nearest male relative of the deceased became the widow's guardian, and it was from him that the next candidate for a husband had to purchase the *mund* over her.

Guardianship, therefore, had a material value, and it was no small sum. *Lex Saxonum* sets the price of the mund at 300 solidi, but this norm relates to the Saxon aristocracy that Charles the Great was trying to win, elevate, and separate from the Saxon rabble.[215] Ibrahim ibn Jaqub's reference to the "wedding gift" among the Slavs also related to a social elite. More specifically, this elite was Mieszko I's retinue (*drużyna*) on whose behalf the duke apparently paid the gift due to the bride's father at the wedding. According to Ibrahim, the value of this "wedding gift" was

213 Frost, III, 13, Gul., 58.

214 LSax, XLIII, XLIX and LXV; *Aethelbert*, 77 (Liebermann. GA, vol. I, p. 7).

215 LSax, tit. 40. For Charles the Great's politics in relation to Saxon tribal aristocracy, see chapter IV, subtitle 4 in this book.

so high among the Slavs that a father of several daughters could enrich himself, while a father of several sons could, for the same reason, find himself ruined. The "wedding gift" here was no doubt the Old-Slavic dowry. *Povest' vremennych let* (the *Primary Chronicle*) notes that Casimir I the Restorer gave, in the form of a dowry for Yaroslav the Wise's sister, Dobronega, 800 Russian male captives which had been taken to Poland by Bolesław I the Brave (*vdast' Jaroslav sestru svoju za Kazimira, i vdast' Kazimir za věno ljudij 8 sot, jaže bě polonil Boleslav pobediv Jaroslava*). The *Sofia First Chronicle* is even more explicit about who gave the dowry to whom: "And Casimir collected the people of Yaroslav taken [by Boleslav] as prisoners and gave them as dowry to his sister's brother" ([…] *i sobra Kazimir ljudij jego polonennych 800* […] *i vda za veno Jaroslavu šurinu svoemu*). What this suggests is that the dowry was the bridegroom's payment to the bride's father, brother, or any other guardian and hence an equivalent to the Germanic payment for the *mund*. The woman's situation in the patriarchical family was most probably very similar among the Germanic and Slavic peoples.[216]

In case there were no male relatives, or if they happened to drastically disrespect their honorary obligations as the guardians, the *mund* over a free woman was then transferred into the hands of the man who was the head of the tribe, that is, to the king. For reasons I have already discussed and will discuss later again,[217] this archaic principle retained its binding authority and even its high position within the political system described in the written laws of the Lombards. This is why Rothari's edict and Liutprand's edicts which supplement it contain numerous and very detailed regulations concerning the *mund* over free women.

Among the Lombards, there were three basic kinds of payment pertaining to marriage: *meta* (*metfio*), *faderfio* and *morgingab*. *Meta*, that is, payment for the *mund*, was negotiated by the fiancé and the bride's guardian or guardians. In the end, the amount of the *meta* was defined by a contract stipulated between the parties on the day of betrothal (*meta, quantum dictum est in die illa, quando fabola firmata fuerat*).[218] The handing over of the payment took place later, however, on the wedding day, and it directly preceded the ceremony of passing the woman from her previous guardians to her new *mundoald*, the husband. The *faderfio* (father's gift) resembled what would be found in a dowry that the girl who was getting married received from her family home. And the *morgingab* ("morning's gift") was given by the husband to the wife on the morning after the wedding as

216 Abraham, p. 50; PVL, vol. I, p. 104 and vol. II, p. 380; Abraham, *Zawarcie małżeństwa*, pp. 80 ff., 84, 91, 102f. and 117.

217 See chapter II, subchapter 3; and chapter VI, subchapter 3 of this book.

218 LL, Ro, chapter 191, p. 54.

a sign of the marriage's consummation. *Faderfio* and *morgingab* constituted the indisputable personal property of the woman both in marriage and in widowhood, as well as when she left her late husband's home to remarry or to return to her family home under her own relatives' guardianship. Likewise, the law of the Alemanni did not allow the heirs of the deceased husband to claim the property he once gave to his wife as a morning gift. To dismiss the heirs' claims, it sufficed for the wife to swear an oath that "my husband gave it to me as *morganagepha*."[219]

In the times of Liutprand and Aistulf, *meta* was also considered to be the fiancé's payment for the benefit of his future wife. In widowhood, it was her property to which her late husband's heirs could make no claim.[220] In Rothari's edict, however, the character of this payment is entirely different. According to chapter 182 of the edict, a widow had the right to:

> go to another husband, provided he is free. Moreover, the second husband who wishes to marry her should give, from his own property, for her marriage a portion to him who is the nearest heir of the first husband half of that amount which was offered when the first husband betrothed her. If the heir does not wish to accept this amount, then the woman shall have it together with [her first husband's] morning gift [*morgengab*] and that which she brought with her from her own relatives, that is, her father's gift [*faderfio*]. Her relatives then have the right to give her to another husband where both they and she desire it, and the relatives of the first husband shall not have her *mundium* because they refused their consent: therefore her *mundium* shall return to the near relatives who first gave her to her husband. And if there are no legitimate relatives, then her mundium shall belong to the king's fisc.

Chapter 183 relates to the same situation:

> If anyone purchases the *mundium* of a free woman or girl and she is handed over to him as wife, and if afterwards the husband dies, then the woman ought to go to another husband, to her relatives, or to the court of the king. In such an event the heirs of the first husband should receive half of the marriage portion as established above, and she should be handed over again by hand [*per manum*] in similar manner as she was handed over to her first husband. For without this handing over, none of the things we speak of is fully established (*heredes mariti prioris accipant medietatem de meta, sicut supra constitutum est, et ipsa per mano simili modo retradatur, sicut priori marito tradita fuit. Nam aliter sine traditione nullam rei dicimus subsistere firmitatem*).

Comparing these two norms unambiguously suggests that in Rothari's times only the *faderfio* and *morgingab* were a woman's property, while the *meta* was given by

219 LL, Ro, chapter 199, p. 58 (the portrayal of the *faderfio*); 182, p. 52 (*morgingab*); LA1, tit. LVI, 2.

220 LL, Li, chapter 89, 103 and 114; and Aist., chapter 14.

the future husband to the guardians of his wife-to-be as payment for her *mund*. If she remarried, the *mund* was bought at half the price. Yet this payment, that is, the *meta*, always remained in the hands of the previous guardians and not of the woman.

As long as the father was alive, he was the only *mundoald* of an unmarried daughter. After his death, there could be several *mundoalds* because the *mund* was passed, in accordance with the rules of inheritance, to the deceased's sons, and if there were not any, then to other relatives. Illegitimate sons (*filii naturales*) received one-third of the *mund* over their unmarried sisters, while legitimate sons received two-thirds. The inheritance was shared according to the same proportions. Even when the deceased left only illegitimate sons, they only had the right to one-third of the *mund* and of the legacy, while two-thirds were given to secondary relatives according to the order of inheritance rights. If there were not any, the two-thirds belonged to the fisc.[221] The chain of the claimants to the *mund* corresponded, as can be seen, to the chain of the potential inheritors and it therefore included the cognatic clan, or, more precisely, all the men who belonged to it. Feud, reconciliation, inheritance, and *mund* were matters pertaining to the same group.

If several blood and step brothers– the legitimate and illegitimate sons of her father – acted as a woman's *mundoalds*, when they married her off they shared among themselves the received *meta* as was decreed in chapter 161 of the edict. They did not do this in order to subsequently collect the money again and give it to the bride. There is an ineradicable discrepancy between Rothari's edict and Liutprand's and Aistulf's legislation. We can only explain this discrepancy as the result of a particular change. Sometime between 643 and the third decade of the 8th century, the amount paid by the groom to the previous *mundoald* for the purchase of the *mund* was transformed into a wedding gift from the husband to the wife.[222] The Lombard *meta* thus underwent an evolution similar to the Slavic dowry, the difference being that on the Apennine Peninsula, which was under the strong influence of its Roman surroundings, the transformation of the barbarian marriage customs proceeded at a faster pace than in eastern Europe.

This was a complex transformation, and it did not involve solely the character and the assignment of the payment called the *meta*. Opinions and norms concerning the position of women in marriage and in blood kinship, as well as property relations between the spouses were also changing. That is why drawing

221 LL, Ro, chapters 160 and 161 together with chapters 154 and 155.

222 Feller ("Morgengabe") assumes this evolution.

conclusions on the basis of the documents of the 9th and the 10th centuries concerning the legal position of Lombard women in the times of Alboin and Authari can lead us astray.[223] We need to look for relatively safe footholds on the boggy paths of retrogression. In this respect, Rothari's edict has an unmistakable advantage over the later sources.

"If anyone who possesses the *mundium* of a free girl or woman […]," chapter 195 of Rothari's edict decreed:

> plots against the life of that girl or woman or tries to hand her over to a husband without her consent or voluntarily consents that someone do her violence, or if he plans one of these offenses and it is proved, he shall lose her *mundium* and the woman shall have the right to choose between two things. She may choose whether she wishes to return to her relatives or whether she wishes to commend herself – together with the property which legally belongs to her – to the king's court so that the king may have her *mundium* in his control.

Chapters 196 and 197 stipulated the same consequences in case a girl or woman under guardianship was unjustly accused of committing adultery or of being an "enchantress" (*masca*) or a *strega* (i.e., a witch who devours people). Yet in all three chapters, the norms limiting the rights of lawless *mundoald*s were qualified with a telling provision: "with the exception of the father or the brother." They did not lose the *mund* over their daughter or sister even if they tried to kill her, or marry her off against her will, or publicly called her an enchantress. The father's *mund* bore the signs of a harsh arbitrary authority. The *mundoald's* license was restricted by law only when there was no father or brother, and the guardianship had gone through inheritance to the paternal uncle or any of the more distant relatives.

A husband's authority over his wife, though not so arbitrary as the father's *mund*, was also characterized by great severity. A husband could kill his wife and her lover with impunity if he caught them committing adultery (Rothari, chapter 212). He could also punish his wife however he wanted – including killing her – if she threatened his life. If a woman thus accused by her husband denied the accusation, her relatives had the right to clear her of the charge through an oath or trial by combat. In accordance with the clan's collective honor, they then stood against her husband. Married off, and thus under the husband's *mund*, the woman was still a member of her own clan. If, on the other hand, "a husband kills his innocent wife who had not legally deserved to die" (*si maritus uxorem suam occiderit inmerentem, quod per legem non sit merita mori*), he had to pay

223 See, for example, Cortese, "Per la storia del mundio."

1200 solidi – a free Lombard woman's wergild, "half to the relatives who gave her to her husband and from whom he received her *mundium*, and half to the king." Like any wergild, this one was also a condition for avoiding feud. The husband (killer) who was unable to pay such a huge amount risked death at the hands of his wife's relatives.[224]

The bond with her father's clan gave a widow a relatively strong position in relation to the *mundoald* from her husband's clan. Her father's clan constituted an alternative guardianship for her, and when depicted in this role, they are always represented in the plural form by the sources. If the late husband's inheritor "went against the will" of a Lombard widow, she was married off again by her own relatives (*proximi parentes*). Title XLIII of the law of the Saxons regulated the question of remarriage in a similar way: "He who wants to marry a widow has to offer to her guardian the price of her purchase by courtesy of her relatives [*offerat tutori praecium emptionis eius, consentientibus ad hoc propinquis eius*]. If her guardian refuses, he must speak to her relatives and marry her under their consent [*convertat se ad proximos eius et eorum consensu accipiat illam*], having the money at hand to give to the guardian if he wishes to say anything […]." If the guardian is unwilling, he must face "them" – the group. In Rothari's edict, the king was also an alternative. A married woman, especially a widow, could even escape an unworthy hand, but she had to seek refuge under someone else's *mund*, since there was no escape from male authority. "No free woman who lives according to the law of the Lombards within the jurisdiction of our realm is permitted to live under her own legal control, that is, to be legally competent [*selpmundia*] but she ought always to remain under the control of some man or the king" – chapter 204 of Rothari's edict decreed explicitly. "Nor may a woman have the right to give away or alienate any of her movable or immovable property without the consent of him who possesses her *mundium*." We have to acknowledge this testimony, not only because it is chronologically the earliest among the Lombard sources, but because the cultural origin of the norms of the edict, much older than the source itself, seem more important than its formal chronology.

The legal tradition of the barbarian peoples was written down only after they had already crossed the threshold of Christianity. A king who decided on codification had already been baptized, and the scribes who wrote down the legal norms spoken at the assemblies in order to subsequently edit and censor them were Christian clergymen. Despite editorial and censorial interventions, the pagan religion and the traditional culture linked with it could still be detected beneath

224 LL, Ro, chapters 200 and 202.

the thin varnish of Christianization which coated the written law codes.[225] The pagan rituals, magical interventions that conferred authority over a legal act, as well as the evidently pagan contents of some of the norms, are like certificates of their origin from the pre-Christina era. From this point of view, the collision of the norms of the marriage law of the Lombards with the sacramental requirements of the Church seems noteworthy.

In the legal tradition of the Germanic peoples, the purchase of a the *mund* by the husband over his wife was a major condition for the legitimacy of marriage. This is why a legal wife was described with the words "bought for the *mund*" in twelfth-century Scandinavia. The marriage ceremony proper, following the purchase of the *mund*, consisted of delivering the woman "by hand" (*gift, traditio per manus*) to the home of the husband who was her new *mundoald*. Without purchasing the *mund* and performing the ceremony of this handing over, the marriage had no legal effect, including that of property ownership. "For without this handing over" – King Rothari admonished in chapter 183 of his edict – "none of the things we speak of is legally established." The Church wedding was not mentioned here, though it is hard to imagine that in Italy of the 7th century a widow's remarriage, like her first marriage, could take place without a Church wedding.

Chapter 188 of Rothari's edict leaves no doubt about this: "If without the consent of her relatives a free girl or widow goes to a husband who is a freeman, then the husband who received her to wife shall pay twenty solidi as composition for the illegal intercourse [*anagrip*] and another twenty solidi to avert the feud" (*conponat anagrip solidos viginti et propter faida alios viginti*). Apart from that, the culprit also had to retroactively pay for the *mund* of his wife. "If she dies before he has acquired her guardianship, then the property of that woman shall revert to him who has her *mundium* in his possession […]. The husband […] shall lose his wife's property since he neglected to acquire her *mundium*."

The newlyweds who are referred to here wed without the due payments and ceremonies that constituted a marriage according to the legal tradition of the Germanic people. The editor of the edict, however, referred to the couple as husband and a wife and described their wicked deed as nothing less and nothing more than marriage: the woman is *ad maritum ambulavit*, while her partner is *maritus, qui eam accepit uxorem*. There is no doubt that they had married in church but transgressed the traditional law of the Lombards. This collision did not invalidate the sacramental union, although it deprived it of legal and property consequences

225 Vordemfelde, *Die germanische Religion*; Schmidt-Wiegand, "Spuren paganer Religiosität."

so long as the husband did not come to terms with his wife's *mundoald* and did not purchase guardianship over her in accordance with the customary norms. It is not so much the property matters but the compensation penalties that the husband had to pay to his wife's relatives that reveal how the Lombards saw church marriage without the purchase of the *mund*. Twenty solidi *propter faidam* constituted the redemption given to the potential avengers to make them cease the feud provoked by the violation of their right to the *mund*. The other 20 solidi for *anagrip* was a separate private penalty paid, admittedly to the same people, but representing a different entitlement.

The same Lombard word (*anagrift*) can be found in chapter 189 of Rothari's edict. This time it does not mention a wedding without the *mund* but premarital sexual relationships:

> If a free girl or woman voluntarily has intercourse [*voluntariae fornicaverit*] with a freeman, her relatives have the right to take vengeance on her [*potestatem habeant parentes in eam dare vindictam*]. And if it is agreed between both parties that he who fornicated with her take her to wife, he shall pay twenty solidi as composition for his offense, that is, *anagrift*. If it is not agreeable that he have her to wife, then he must pay 100 solidi as composition, half to the king and half to him to whom her *mundium* belongs.

The word *anagrift* means here the crime, the transgression (*culpa*) which in Latin is called *fornicatio*, that is, fornication.[226] The fact that the editor of the edict used the same Germanic term in chapter 188 indicates that a church wedding without the prior purchase of the *mund* and the ceremony of the woman's delivery to her husband was considered – in the eyes of Lombards and the king's codifier of their laws – fornication. It was no doubt assumed that after the church ceremony the couple consummated their marriage. This was consistent with the norms of the church but constituted an offense against God (but which god?) from the point of view of the traditional morality of the Germanic people.

In those times, no secular morality of sexuality existed. In fact, we are dealing here not only with the collision of marriage rituals, but also with a clash between two sacred axiologies. In the face of this collision, the edict condemned and punished the violation of traditional norms of pagan provenience, placing them, in a sense, above the normative order of the Christian Church. From the point of view of the traditional culture of the Lombards, having intercourse with a woman on the strength of the Christian sacrament alone was fornication, since it was not preceded by the purchase of the *mund* and the ritual of handing over. This indicates the close relation that the concept of the father's *mund* over the girl and

226 See the pertinent comment from the editors of the edict, LL, note 92, p. 114.

the norm that made it obligatory for the bridegroom to purchase this *mund* had with the values of pagan religion.

The norms of Rothari's edict which concern the *mund, meta* and marriage thus have a pre-Christian origin. They derive from a tribal system and belong to the legacy of tribal culture, similarly to the Old-Norse term used to describe a legitimate wife: a woman bought for the *mund*. This did not mean that there was no difference between a wife and a female slave. It was in accord with the strict patriarchic authority of a man over a woman as his charge. This is how the *mund* is initially described in the sources. We should not be prevented from formulating this conclusion by the anachronistic reflex of modern civilization's indignation with barbarism.

Chapter IV. Some above Others: Social Differences in the Tribal System

1. Outside the Community of Law: Slaves

Tacitus makes two references about how the Germanic peoples treated their slaves that bear the hallmarks of praise for the simplicity of Barbarian customs. In chapter 20 of *Germania*, he writes that children are raised in harsh conditions due to which they "grow up […] into those long limbs and large bodies that amaze us so. […] No little luxuries in upbringing help to distinguish master and slave: they pass their time among their herds and on the same soil, until age marks off the free-born, and virtue claims them as their own." In chapter 25, Tacitus claims that the Germans settled their slaves on the land, and they were made to render various services, while household duties were performed by the master's wife and children. Flogging and other cruelties towards the slaves were rare, though it is true that it might happen that the masters "kill him: not through harsh discipline, but in a fit of rage, as they would a foe, except that the deed is unpunished" (*occidere solent, non disciplina et severitate, sed impetus et ira, ut inimicum, nisi quod impune est*).

Despite appearances, it is not possible to use these references to support the view that the Germanic and Slavic peoples were supposedly unfamiliar with the Roman notion of a slave understood as a thing, a "speaking tool," an object of someone else's ownership rights and deprived of legal subjectivity. There is only one piece of information in Tacitus that goes beyond his idyllic stereotype of the simplicity of the Germanic customs. It concerns the legal condition in Germanic society under which the master could kill his slave without fear of punishment. Indeed, *leges barbarorum* stipulated punishment for killing slaves belonging to another person, but not for killing one's own. In Rus', Pravosudie Mitropolič'e stated: "If a master kills his own slave, then he is not held responsible for murder, but is guilty in the eyes of God. If he kills a hireling, then he is held responsible for the murder" (*Ašte li ub'et gospodar' čeljadina polnogo, neest' emu dušegubstva, no vina emu est' ot Boga. A zakupnogo li najmita, to est' dušegubstvo*).[227]

The phrase *instrumentum vocale* ("speaking tool") was a literary metaphor, possibly too sophisticated to Barbarian tastes. In title X, paragraph 1, of the Salic law, we find, however, a formulation that expresses incidentally and thoughtlessly, as it were, the same idea. It is, therefore, a reliable testimony to what went without

227 *Pamjatniki Russkogo Prava*, wypusk III, p. 428.

saying among the Franks: "He who steals another man's male or female slave, horse, or mare, and this is proved against him, shall be liable to pay thirty-five solidi." The reason why slaves, horses, and cattle were listed in the same breath was, of course, the fact that the penalty for stealing them was identical. This does not weaken but strengthens the formulation.

We can find a similar, and even more suggestive, formulation in the Merovingian *Pactus Alamannorum*: "If a horse, an ox, or a hog kills a man, the whole wergild must be paid. If a slave or any other beast is killed, half of the price must be paid" (*Si caballus boves aut porcus hominem occiderit, totum wiregildum solvatur. Si servus fuerit aut quemvis pecus, medium precium solvatur*).[228] Couched in the thoughtless obviousness of colloquial language, the slave has been here pitted against the human being and assigned to the same category as "any other beast." The reason for this kind of classification is clear: if a human being was killed by a household animal, the victim's relatives would have to be paid wergild, while if a slave or an animal were killed only half of the penalty was due as compensation for the owner.

This means that a slave did not warrant wergild. The *Vast Russkaya Pravda* states the same in black and white: "And in a male and a female slave there is no wergild, but if he is unjustly killed, then for a male and a female slave composition must be paid to the master and 12 *grivna* for peace to the duke" (*A v cholope i v robe viry netut'; no ože budet' bez viny ubien, to za cholop urok platiti ili za robu, a knjazju 12 griven prodaže*).[229]

We have *vira* (wergild) on one hand, and *urok* – that is, compensation for lost property – on the other. This is the exact equivalent of the opposition between the terms *wergildus* and *pretium* in *Pactus Alemannorum*. We find a similar opposition in the Frisian law. At the very beginning (title I, paragraphs 1–10), penalties for the murder of aristocrats (*nobiles*), common free people (*liberi*) and half-free *laeti* are specified. They are all wergilds. Yet in paragraph 11, we read: "If any man […] kills the slave of another, he pays according to how it is valued, and the lord swears with his [single] oath that this was the right price." The same principle is once again formulated in title IV: "If someone kills the slave of another man, he pays him according to the value at which his lord estimates him. Likewise, horses and cattle, sheep, sows, swine, and any other livestock that belongs to men, including the dog, will be paid according to the owner's assessment."

In the case of killing another man's slave, *Lex Ribuaria* does not stipulate composition but a penalty of 36 solidi. Yet as Hermann Nehlsen rightly observes, this

228 PA1, 136, 137, p. 17.
229 PrP, 45.

was not wergild but a composition punishment for a crime committed against property based on tripling the standard value of the slave.[230] This view is corroborated by title XXXIV, chapter 9, of the Salic law which defines penalties for murdering or stealing someone else's highly-qualified slave (*Si quis vassum ad ministerium* […] *puellam ad ministerium aut fabrum ferriarum vel aurificem* […] *furaverit aut occiderit*). The stealing and killing of a slave were seen as the similar offenses since both were crimes against someone else's property.

The terminology we find in the sources was at times wobbly. The Malberg gloss placed in title XXXV, paragraph 1, of the Salic law describes the murder of a slave by another slave with the word *theoleodi*, but this did not in the least mean that a slave's death (*theo*) had to be bought with *leuda* (wergild). On the contrary, in this case the masters, that is, the owners of the killer and the victim, were to "divide the killer between themselves" (*homicida illum domini inter se dividant*). There was always, irrespective of the term used, a fundamental conceptual difference between the punishment for the murder of another man's slave and wergild. Wergild was a payment made to buy off revenge from the victim's relatives, and it therefore belonged to the closer and more distant members of the victim's clan. When a slave was at stake, such a composition was out of the question. Admittedly, he could have a wife and children and blood relatives, but the barbarian laws did not recognize the familial ties among slaves. If a slave was murdered, it was only the master who was the victim, so the composition or the compensatory punishment was due only to him. This was succinctly and clearly expressed in the law of the Bavarians: "If he kills him, let him pay for him with twenty solidi to his master."[231]

Wergild was the most important marker of one's kinship and tribal affiliations and functioned simultaneously as a sign of legal subjectivity. Since slaves did not have wergild, there is nothing strange in the fact that they were not entitled to any compositions for injury, wounds, or beatings. In these cases, as in the case of murder, it was the master who was the victim and all compensatory fines belonged to him. This assertion is solidly corroborated by the sources and raises no objections in the literature on the topic.[232] For the purposes of illustration, it will suffice, therefore, to cite two norms from title XXVI, paragraph 5, of the Burgundian *Liber constitutionum*: "If any native freeman strikes out the tooth of a freedman, let him pay him three solidi. If he strikes out the tooth of another's slave, let him pay two solidi to whom the slave belongs." In the case of an emancipated man, we

230 LRib, title VIII; Nehlsen, *Sklavenrecht*, pp. 268 and 264.
231 LBaiuv, VI, 1 and 12.
232 Nehlsen, *Sklavenrecht*, p. 370f.

are dealing with composition which was due to him; in the case of a slave, however, it was his master who recouped the material loss. A slave missing a tooth was worth less than a slave with all his teeth intact.

A slave was not considered to be a legal subject in any situation: neither when he fell victim to a crime, nor when he himself committed it. He did not own anything, so the master was liable for whatever damage he caused to others. This rule was most clearly formulated in the law of the Thuringians (title LIX: "Every damage caused by the slave has to be compensated by his master"), but it was observed everywhere. The law of the Saxons stated clearly that this rule applied also in the case of court punishments: "If a slave commits a crime without his master's knowledge, e.g., a murder or a theft, then on his behalf his master pays a penalty appropriate to the committed crime." The Swedish *Westgötalag* puts it even more emphatically: a slave "cannot be called a killer," and if he kills anyone then his master has to pay the wergild or be liable to revenge.[233]

A similar rule was followed in the law of the Lombards. Rothari's edict took only one exception from it in the interest of the fisc: if a king's slave committed murder, that is, a treacherous assassination involving disposal of the body, then instead of imposing the regular enormous penalty of 900 solidi, a simple wergild (150–300 solidi) had to be paid to the victim's relatives. Then the murderer was to be turned over to the relatives to be hanged over the victim's open grave so they might thus exact revenge upon him. The king exempted only himself from the exorbitant fine. All other Lombards had to pay every solid of the penalty for their slaves' crimes.[234]

On the territories of Gaul, the barbarian laws departed more audaciously from the rule of the master's full legal responsibility for his slave. The law makers tried to relieve the masters materially, subjecting the culprits to various kinds of corporal punishment. This was most probably done under the influence of Roman models. In Frisia, when a slave killed a free person, the master paid the wergild "as if he had killed him with his own hand" (*conponat eum, ac si ipse eum occidisset*). Yet when the crime was not murder but theft, the master had only to repay the victim's loss. The slave culprit, on the other hand, was subject to flogging "if his lord does not want to redeem his skin with 4 solidi" (*nisi dominus eius quatuor solidis corium eius redimere voluerit*).[235] All in all, this meant considerable savings.

233 LSax, LI; WgL, Af mandrapi, 1, 4.
234 LL, Ro, chapter 370 and 371 and 373.
235 LFris, I, 21 and III, 7, p. 44.

The Salic law was similarly thrifty in regulating the masters' material responsibility for thefts committed by slaves. The master paid in every case only for the stolen property, whereas the slave was punished corporally instead of the master paying a fine. He was given 120 lashes in the case of minor theft – that is, a theft worth 2 denari for which a free person would be given a 15 solidi fine. If the slave stole property which was worth more than that (e.g., 40 denari) – for which a free person had to pay a fine of 35 solidi – he was castrated. If the parties came to a mutual agreement, that is, the robbed man and the master whose slave had committed the theft, the slave could be spared from flogging with 3 solidi and from castration with 6 solidi. All in all, the slave's master settled the accounts with the victim on the cheap; he paid no more than one-fifth or one-sixth of the penalty stipulated for the same offense committed by a free person. For more serious crimes punished with a penalty of 45 solidi, the slave could not be spared by settlement but was subject to the death penalty.[236]

A. I. Nieusychun was inclined to perceive in these norms the beginnings of criminal responsibility and hence also of the slaves' legal subjectivity. We should, however, cede to Hermann Nehlsen's argument, who notes that any decision to spare the slave from flogging or castration was made by the master, and that the means used to spare him were also the master's.[237] Such corporal punishment itself and the handing of the slave over to the injured party and certain death cannot be interpreted in terms of the slave's responsibility for the crime as a legal subject. Under title XXXV, paragraph 8, of the Salic law, if another man's slave kills a free man, the killer must be handed over to the relatives as half of the wergild, while the other half had to be paid by his master. Before we draw any conclusions from this regarding the slaves' supposed subjectivity, it is worth reading in title XXXVI a nearly identical norm concerning household animals: "If a man has been killed by a domesticated four-footed animal […] the owner of the animal shall pay half of the composition; and let him hand over the animal that caused the offense to those demanding it to count for the other half-composition."

The Burgundian laws went the furthest when it came to relieving the masters of material criminal responsibility for their slaves. *Liber Constitutionum* stipulated only flogging or death for a crime committed by a slave. *Lex Ribuaria*, on the other hand, stands by the principle that the master pays for his slave's offenses as if he committed them himself, but limits the maximum amount of a penalty to 36 solidi. This is the exact amount a killer of another man's slave would have

236 PLS XII, 1 and 2; and tit. 40, paragraphs 1–5 and 12.

237 Nieusychin, *Vozniknovenie*, pp. 140–143; Nehlsen, *Sklavenrecht*, pp. 327–329.

to pay to his master; conversely, the master's responsibility could not exceed this limit.[238]

According to Ripuarian law, the master could clear his slave of theft charges by swearing an oath in the presence of seven persons. If he was not certain of the truth, he could put him on trial by ordeal. "If [when undergoing the ordeal] the slave puts his hand into the boiling water and brings it forth injured, let his master be held liable as the law contends for the theft [committed by] the slave."[239] What follows from this is that a slave could be an object of ordeals, but he could not stand trial as an accused and be found guilty and convicted.

He could not appear as a witness either. This posed a serious problem in situations in which only a slave could have seen with his own eyes what needed to be ascertained in court. Title XXXIX of the Salic law concerns precisely this situation. If a slave was stolen and taken overseas by kidnappers to be sold, but is found and taken back by his former legitimate master, the kidnapper had to be tried. But only the slave saw him and could identify him. For the slave's words to taken as evidence, he had to repeat them thrice, each time to three credible, that is, free witnesses (*testes idonei*). All these witnesses then testified to what they had heard from the slave. If their evidence was the same, then the kidnapper was fined with 35 solidi.

The *Vast Russkaya Pravda* also grappled with the problem of transforming a slave's testimony into evidence. Article 85 proclaimed that all cases should be considered on the basis of evidence given by free witnesses (*ty tjaže vse sudjat' posluchy svobodnymi*). "If the witness is a slave, he is not to take [a direct] part in the trial" (*budet' li posluch cholop, to cholopu na pravdu ne vylaziti*). The accuser who was a party to the dispute and thus a free man could, however, on the basis of the slave's information, demand that the accused be subject to trial by red-hot iron. Putting forward this kind of demand, he simultaneously had to solemnly declare that: "I am seizing thee on the ground of this [man's] words, but it is I who seize thee, and not the slave" (*po sego reči emlju tja, no jaz emlju tja, a nie cholop*). If the trial went favorably for the accused, then the accuser had to pay compensation to him "since he seized him on the ground of a slave's words" (*zane po cholop'i reči jal i*).

A good portion of the slaves were maintained by their masters, but there were also many others who were given land and more or less independently made use of livestock and household equipment. Yet neither those who were

238 Modzelewski, "Ludzie bez prawa," p. 80f. and note 33.

239 LRib, XXVI, XXVIII, XXIX and XXX, 1.

part of the household servants nor those who kept a house had rights to the so-called *peculium*, that is, to an object they in fact had in their hands. A slave was not entitled to enter into transactions or to incur a debt. According to title L of the Salic law, only a free man or a *laetus* could undertake to repay his debts. As can be seen, the codifier did not omit personally dependent persons but failed to mention the slaves. As Nehlson rightly observes, the *ex silentio* argument in this case yields evidence.[240] As a matter of fact, the law of the Burgundians stated straightforwardly that he who entrusted his money with another man's slave without telling his master, could not make any claim to its repayment (*si quis inconsulto domino* […] *servo solidos commodaverit, pecuniam perdat*). The *Vast Russkaya Pravda* stipulated the same. Both the *Vast Russkaya Pravda* and *Leges Burgundionum* made it clear, however, that if the master allowed a slave to conduct trade or practice craft (*aže kto pustit cholopa v torg…*; […], *quicumque vero servum suum* […] *in publico* […] *artificcium exercere permiserit* […]), he (the master) was fully liable for the slave's actions. The slave himself was never materially liable.

Two norms of the Visigothic *Codex Euricianus* settle the question of the rights *in rem* to objects held by slaves in the form of *peculium*. These norms were taken from a codification by Leogivild in the middle of the 7th century from where the editor of the law of the Bavarians borrowed them verbatim in the 8th century. The first of these norms stated that "If anyone sells his slave, perhaps not knowing what objects he has, let his master who sold him have the power of reclaiming those objects wherever he can find them." According to the second norm, "if any slave buys his freedom with his *peculium* (*de peculio suo fuerit redemptus*), and perhaps his master does not know this, let him not pass from the power of his master, since his master unknowingly received not the purchase price but the objects of his slave" (*quia non pretium, sed res servi sui, dum ignorat, accepit*).[241] This logic is telling; the master was cheated because he was paid with something that belonged to him anyway. The slave's property was the master's exclusive property and it, therefore, could not be used to finance the slave's redemption from the master's hands.

The barbarian codifications were burdened with many contradictions between tribal law and the norms of the Christian Church. There is no doubt that slaves' marriages were acknowledged and sanctioned by the Church. From the point of view of the barbarians, this posed a serious problem. A free woman's marriage with

240 Nehlsen, *Sklavenrecht*, p. 270.

241 CEur., 291 and LVis., V, 4, 15 and 16 (*antiqua*); LBaiuv., XVI, 6 and 7.

a slave turned her into a slave and disgraced her family. Since the sacrament was sacrosanct, the only way to save the family from disgrace and from damaging their status was to kill both or one of the spouses. Sigismund's Burgundian law code opted for the more radical solution: "We order both to be killed." *Lex Ribuaria* was perhaps less bloody but no less brutal. On the demand of the woman's relatives, the king or the *comes* made her choose between the sword and the swindle; if she chose the former, she used it to kill her husband and regained her freedom. If she preferred the latter, she remained with the husband in marriage and in bondage.[242] This norm indicates that the rules of the Church were observed (marriage had to be lifelong), but the rights of the slaves were not.

The main signifier of a Germanic man's subjectivity in marriage and in family was his *mund* over the wife and children. Being subject to the *mund* of a relative or the king was also a symbol of the dependant yet subjective position of the woman; she had the rights of a charge. A female slave was not a charge. The decisions to marry her off as well as the fines for the murder, injury, or significantly in this case, the rape or seduction of another man's female slave were her master's. He was her owner, not her *mundoald*. In the barbarian laws, the notion of the *mund* did not relate to female slaves, although these laws do mention sexual offenses the victims of which were another man's married female slaves.

The difference that existed between slaves and the lowest category of the freed men and women in this case is very clearly presented by the law of the Bavarians: "If he lies with a freedwoman, whom they call *frilaza*, and she has a husband, let him compensate with forty solidi to her relatives or to her master or to her husband." The freed woman, *frilaza*, had, as is apparent, a master on whom she was dependant, but her relatives and husband – most probably of the same status – were also considered wronged and entitled to composition. The situation was different when a female slave was the victim: "If anyone lies with another's married maidservant, let him compensate with twenty solidi to her master." The master was the only person wronged and entitled to compensation here. Neither the slave's betrayed husband (necessarily also a slave) nor any of her blood relatives mattered here. It appears that the slave, though a husband and a father in the eyes of the Church, had no family according to tribal law.

This conclusion finds support in Liutprand's edict of 726: "If two brothers, or if a father and his son, have been freed by the formal gairethinx procedure (*thingati fuerent*), and if one of them dies without sons or daughters, the king's court shall succeed him. We have recorded this provision since, although it has

242 LC, XXXV, 2 and 3; LRib, LVIII, 18.

not been written thus in the edict proper, nevertheless all the judges and our fideles have said that the old custom (*cawerfeda*) has been thus up to now" (*quod caverfeda antiqua usque nunc sic fuissit*).[243]

What follows from this is that chapter 77 of Liutprand's edicts cited above was, in fact, an interpretation based on an old custom of what chapter 224 of Rothari's edict prescribed in the case of inheriting from freed men. Two categories of freed people – *fulcfree* (fully free) – were distinguished there. To the first belonged those who were *amund*, that is, "people without the *mund*," whom the master made upon emancipation a "stranger to himself [the master]." Those over whom the master retained patronage, understood in terms of a relative's *mund*, belonged to the other category. "And if he who is made legally independent (*amund*) dies without legal heirs, the king's fisc shall succeed him […]." It was the patron and not the king who inherited from a freed man of the lower category who was *fulcfree* but not *amund* and died leaving no legitimate sons or daughters.

The freedman mentioned in chapter 77 of Liutprand's edict had to be *amund* since his legacy went to the fisc. We therefore need to think who the "legal heirs" were. One of Liutprand's edicts mentions a father and his sons or brothers who were freed together achieving the status of fully free (*fulcfree*) and fully legitimate Lombards independent from their former master (*amund*). The codifier deals with a situation when only one of them died (*si unus ex ipsis* […] *mortuus fuerit*) and the other remained alive. It would be hard to find an instance of a closer relationship than the one between a father and a son or two brothers. And yet, it was to the fisc and not the living father, brother, or son that the legacy belonged unless the deceased had fathered some other sons or daughters that the source describes as "legitimate" heirs. How should we understand this? How were those new sons who were entitled to the legacy different from the older son who, together with his father and brothers, had become free and was thus, like the testator, *fulcfree* and *amund*?

The only difference we can point to here is the date of birth. The freedman's sons and daughters who were born after he had been manumitted were the *heredes legitimi*, heirs entitled to inheritance. After they had been freed, sons, fathers, and brothers born in slavery acquired all the *in rem* and personal rights accorded to free people. They could buy and alienate property, but they could not inherit one from another. A deceased freedman who left behind only sons born in slavery was

243 LL, Li, chapter 77, p. 166.

treated as a childless man in matters of inheritance.[244] Such was, according to the concurring opinion of Liutprand's noblemen, the unwritten norm in force since time immemorial. It was based on the firm conviction that a slave did not have a family.

I believe we are arriving at the essence. The claim that in traditional barbarian societies a slave had no legal subjectivity is beyond dispute. Yet a trap often lurks in commonly accepted truths; the dazzling brightness of their obviousness prevents us from seeing the problems hidden behind a trivial formulation of the indisputable. The definition of slavery as a complete absence of legal subjectivity derives in our culture from the legacy of Roman legal thought. It has been most succinctly put by the editor of the *Justinian Digests*: *Servile caput nullum ius habet, ideo nec minui potest*.[245] It is not possible to violate a slave's rights because he does not have any. We can similarly describe the situation of the slaves in *leges barbarorum*, yet it is doubtful whether the conceptual apparatus Justinian's lawyers used corresponded to the categories of the traditional culture of the barbarian tribes.

The fact that slaves did not have wergild can be seen as the most significant sign of their lack of legal subjectivity, one that puts an end to further discussion. But the Germanic and Slavic peoples treated wergild (*leuda*, *vira*, *główszczyzna*) not only as composition for the violation of the law, but also, and even primarily, as redemption for revenge paid to the victim's relatives and a condition necessary to end the feud between clans. The conviction that a slave does not have family and relatives does not therefore seem secondary, but rather of prime importance in relation to the lack of wergild, compositions, and other signs of legal subjectivity. If a slave fell victim to murder, no family feud was undertaken. It was the master who was the victim, but his relation to his slave did not bear any traits of artificial kinship. It was a relation based on ownership. This is why – as has been precisely defined in article 89 of *Russkaya Pravda* – the punishment for killing a slave was not *vira* but *urok* paid to the master who incurred a material loss.

Title LX of the Salic law tells us that kinship was not the only guarantee of an individual's subjectivity. A man who solemnly and legitimately severed all ties with his kin was still protected by wergild and remained a testator. In the case of his murder, his wergild belonged to the king of the Franks. So did his legacy if

244 Pieniądz-Skrzypczak has noticed this ("Konkubinat," note 65, p. 355): "The natural blood ties were of no importance here. Kinship between slaves did not have any legal effects. It did not acquire any such effects upon manumission. Only if the freedmen fathered children after they had been manumitted, could those children inherit from them."

245 Digesta, lib. V, title V, 3.

he died childless. Like any subject of the Salic law, that man was a Frank and – in spite of being severed from the family – remained a member of the ethnic and legal community of his native tribe headed by the king. Let us therefore ask about the ethnic affiliation of the slaves.

The slave labor force was recruited primarily from prisoners from foreign tribes captured during wars. With time, they of course underwent linguistic and cultural assimilation, but becoming like those around them did not always mean becoming like their masters. After they conquered Italy, the Lombards acquired property together with slaves who spoke Latin. The new slaves that the Lombards acquired at war and settled in Italy underwent, as can be assumed, Romanization rather than Germanization. Yet, if a master decided on manumission, then a Lombard's slave automatically became a Lombard, while a Roman's slave became a Roman.[246] It did not matter what language the manumitted spoke or from what country his or her more or less distant ancestors came. Manumission resembled birth, or rather, adoption; the master led the slave from his or her ethnic and legal nothingness into his own tribal community.

Reinhard Wenskus has demonstrated that in the barbarian peoples' understanding the tribe was a legal community.[247] In the categories of the traditional culture of these peoples, legal subjectivity was inseparable from ethic identity. Law in general did not exist. There were only the laws of the Lombards, Romans, Franks, Saxons, etc. At the same time, the tribe was seen as an extension of blood kinship. Conferring ethnic law on a slave indeed meant the act of adoption into the tribe. It was stated unambiguously, though incidentally and with little thought, in the Ripuarian law. In title LVII of this law, the codifier categorically forbade to again enslave a man who had been formally manumitted "through a denarius" before the king and had received a written certificate of manumission. The man was ("to remain free forever as all other Ripuarian Franks") (*nullatenus eum permittimus in servicio inclinare; sed sicut reliqui Ribuarii liber permaniat*).

The relation between membership in the group of "all other Ripuarian Franks" and freedom was obvious to the codifier. Through the act of manumission, the former slave became a Frank. This had nothing to do with his ethnic origin. Before he became a Frank, that man had been no one in ethnic terms. He did not have a family and thus did not have any avengers or wergild. He had no tribal identity and therefore had no rights. He could claim neither *Lex Longobardorum*, nor *Lex Ribuaria*, nor even *Lex Romanorum*. No community stood up for his life,

246 LL, Ro, chapter 226 and CDLS, vol. II, no. 231.

247 Wenskus, *Stammesbildung*, pp. 38–43.

health, or dignity. From this point of view, lack of legal subjectivity was the effect rather than the cause of the lack of familial, kin, or tribal membership. In barbarian society, a slave had no rights because he was not part of any community.

2. The *Laeti*

Among the Franks, Saxons, Frisians, Alemanni and Lombards, and in the Anglo-Saxon kingdom of Kent, there was a separate class of people who occupied a middle ground between the free and the unfree. In the 19th and 20th centuries, legal historians described this class as "half-free." It is an armchair term in which the perspicacity of observation came to be linked, paradoxically, with the conceptual helplessness of the modern lawyer facing an archaic culture.[248] In the Frankish sources and those edited under Frankish influence, those "half-free" were called the *laeti*. The Saxons also used the native word *lazzi*, while the Lombards had the word *aldii*. The etymology of the word *aldius* is unclear, and it probably differs from the etymology of the word "*laeti*," but Charles the Great's capitulary of 801 states explicitly that *aldiones* are a Lombard equivalent to the *laeti*.[249]

At times – when there was a need to clearly highlight the difference between the *laeti* and the free – sources have described them as if they were slaves. This is the case with title XI (paragraphs 1 and 2) of the Frisian law. It describes two model solutions to a court dispute about the legal condition of people. The first speaks of a man who out of his own will relinquishes freedom and offers himself and his service to another man as a *laetus* (*in personam et servitium liti se subdiderat*), and then attempts to deny having done so and to break the shackles. The second paragraph describes a reverse situation; the laetus buys his freedom from the master with his own money (*litus semetipsum propria pecunia a domino suo redemerit*), and after some time the master denies he freed him (*non te redemisti, nec ego te libertate donavi*) and attempts to subject him again. In both cases the dispute was settled by means of a collective oath. Depending on its outcome, the alleged *laetus* was freed (*servitute liberetur*) or subjected to the master (*dominus conquirat eum sibi in servitutem*). The legal condition of the *laeti* is here – mainly due to terminology – similar to slavery; the *laetus* has a master to whom he is subjected personally (*in personam*). The relation between them was described as *servitium*, while the abolition of this relation through redemption as manumission.

Title XXVI of the Salic law also speaks of the act of manumission of both a *laetus* and a slave. In both cases, the manumission followed the same procedure

248 This has been noted by Molitor, "Zur Entwicklung," p. 112.

249 CRF, no. 98, chapter 6.

(through a denarius). The title speaks of criminal manumission, that is, the freeing of a slave carried out by a third party and without the knowledge and consent of the master. Yet if a denarius was thrown before the king and the words of the Frankish formula (*maltho: ti atomeo leto* in the case of a *laetus* – and *maltho: ti atomeo theo* in case of a slave) were spoken, the former state could not be restored. The only thing left was to compensate the wronged master. The culprit had to pay the same penalty paid for a *laetus's* murder (wergild of 100 solidi) or for a slave's murder (a composition of 35 solidi). Moreover, he had to pay the master the market price for the deceitfully freed slave (*solidos XXXV culpabilis iudicetur et insuper praetium servi domino suo reddat*). In the case of a *laetus*, such a payment was out of the question. Had it not been for this difference it could be said that a *laetus* was, like a slave, the master's property.

Chapter 140 of Liutprand's edict also brought the manumission of *aldii* and slaves under the same common denominator. In a sense this norm penalized sexual abuses by the masters who "inspired by hatred of the human race" committed adultery with the wives of their slaves and *aldii*. The king decided that a man guilty of such a crime "shall lose that slave or *aldius* with whose wife he committed adultery and the woman as well. They shall go free where they wish and shall be as much folkfree (*fulfreal*) as if they had been manumitted at the assembly (*gairethinx*) (*tamquam si thingati fuissint*)." We need to distinguish here between the norm itself instituted by Liutprand under pressure from the Church and the traditional model on which the king drew. The king's intervention that threatened indecent masters with taking their slaves and *aldii* was no doubt a novelty. The words "as if they had been manumitted at the *thing*" testify to the existence of a very old procedure of manumission whereby both slaves and *aldii* were liberated to the status of *fulcfree* by their masters. Similarly to the *laeti* in title XXVI of the Salic law, the *aldii* seem to be a group comparable to the slaves.

Yet there are also quite a few norms significantly testifying to the contrary in the laws of the Lombards. Unlike the slaves, the *aldii* are explicitly called "free." Chapter 217 of Rothari's edict is the most striking amongst them. It decrees that an *aldia* who marries a slave "loses her freedom" (*libertatem suam amittat*) through this unequal marriage. In the eyes of the Lombard codifiers, the notion of personal freedom was apparently elastic and ambiguous. When juxtaposed with the fully free, the *aldii* and the slaves could be brought under a common overriding category. When juxtaposed with the slaves, the *aldii* could be defined as free.

In chapter 224 of Rothari's edict, where different kinds of manumitted people are mentioned, it was emphasized that he who wanted to turn his slave into an *aldius* should not "give him four paths" (*Item qui aldium facere voluerit, non illi dit*

quattuor vias) during the manumission ceremony. This was about the words spoken at the intersection of the paths leading to the slave who was to become "fully free" (*fulcfree*): "From these four roads you are free to choose where you wish to go." This was paramount to the conferral of the right to leave (depart from the master's property). An *aldius* did not receive this right. So he was granted freedom that was considerably limited. It was apparently assumed that it was freedom nonetheless, since the act of transforming a slave into an *aldius* was seen as one of the four types of manumission (*Haec sunt quattuor genera manumisionum*).

Does this mean that the *aldii* were the lowest category of freed people? The opinions of scholars are divided,[250] but the editor of Rothari's edict had no doubts. In chapter 208 he uses the terms *aldia* and *liberta* interchangeably: "If anyone has abducted another man's *aldia* and taken her into another man's courtyard and her lord or relatives have pursued them; and if the owner of the courtyard blocks the way and does not permit the lord or relatives to vindicate her or drag him [who abducted her] without, then he who blocked the way shall pay forty solidi as composition, half to the king and half to him to whom the freedwoman belongs" (*medietatem regi et medietatem cui fuerit liberta*). As can be seen, according to the edict every *aldia* was a freed woman, though obviously not every freed woman was an *aldia*.

Describing the *aldii* as free could stem not only from the need to distinguish them from the slaves, but also from a conviction that they were freed. We can easily notice this when collectively reading chapters 205, 206, and 207 of Rothari's edict: (205) "He who rapes another man's *aldia*, that is, one who was born of a free mother (*qui iam de matre libera nata est*) shall pay forty solidi as composition"; (206) "He who rapes another man's freedwoman, that is, one who has been set free (*id est ipsa persona, qui libera dimissa est*), shall pay twenty solidi as composition"; (207) "He who rapes another man's female slave, shall pay twenty solidi as composition." The fact that an *aldia* was born "of a free mother" does not in the least mean that she was a product of a misalliance, a daughter of an *aldius* and a woman who was *fulcfree*. The point is that it was not only the raped *aldia* who was free but also already her mother, while the woman that chapter 206 speaks of was a first-generation freedwoman, that is, she was born a slave. The difference was significant because it was reflected in the punishment for rape: twenty solidi, the same as for a slave, if the victim was a first-generation freedwoman, but forty

250 Molitor ("Zur Entwicklung," p. 119f.) was convinced that *aldionat* derived from the manumission of slaves into the state of incomplete freedom; Nehlsen, *Sklavenrecht*, p. 373, holds a different view.

solidi if the raped *aldia* "was born of a free mother." Her mother, the *mater libera*, was thus a freedwoman and not *fulcfree*. She was, like her daughter, an *aldia*. The *liberta* mentioned in chapter 206 was probably also an *aldia*, not a fully free person. We cannot otherwise explain the fact that the punishment for her rape was the same as for the rape of a female slave and by half lower than of an *aldia* born in the family of *aldii* but not in slavery. This would imply that the status of the people raised from slavery to the position of *aldii* was initially very low and that it improved considerably only in the second generation.

Among the Ripuarian Franks, it seems the situation was very similar. According to *Lex Ribuaria*: "If a man makes his slave a tributary or a *laetus*, and someone kills him, then [that killer] shall be liable to pay 36 solidi." The norm was formulated in such a way as to dispel any doubts that it referred to a man who had recently been raised to the status of a *laetus* but had been born a slave. The Ripuarian law stipulated a punishment of thirty-six solidi for the killing of another man's slave, while according to the capitulary which supplemented that law, a *laetus's* wergild was the same as in the law of the Salic Franks: one hundred solidi.[251] There is no need to question any of this seemingly contradictory information. The unmistakable correspondence among chapters 205–207 of Rothari's edict allows us to assume that we are indeed dealing here with inequality among the *laeti*. Let us not forget that during the first period after the act of manumission, a *laetus* (*aldius*) did not yet have his own kinship community that could provide him with support and protect his rights. His social position was thus *de facto*, and probably *de iure*, weaker than after the passage of one or more generations.

Pactus Alamannorum (II, 48) also mentions casually the promotion of a slave to the state of a *laetus*. The punishment for appropriating the bloodied clothes of a killed person was forty solidi if the deceased was a free person but thirteen and one-third if he was "a *laetus* freed in church or in the presence of the warriors from the family [of the master]" (*si litus fuerit in ecclesia aut in heris generationis dimissus*) and twelve solidi if he was a slave. The reference to the act of manumission performed in church or at a meeting of mutually related (also, no doubt, with the master) warriors situates the *laeti* below those who were born free but above the slaves. Clausdieter Schott has wondered if all Alemanni *laeti* were recruited from among such freed men and women.[252] But perhaps we should ask a more general question: were the *laeti* who lived in the countries north of the Alps, like the Lombard *aldii*, the lowest class of the manumitted?

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251 LRib, title LXII, 1; see LRib, title XXVIII and *Capitulare legi Ribuariae additum*, chapter 2.

252 Schott, "Freigelassene," p. 54.

What suggests an affirmative answer, apart from the already cited information from the Ripuarian law and the *Pactus Alamannorum*, are two important arguments. The first relies on a comparison of the information given by Nithard and Rudolf of Fulda about the social stratification of the Saxon society. The well-informed Nithard wrote down almost on the spot the news of the Saxon Stellinga uprising in 841–842, and in order to explain the social background of the events, he added: "This whole tribe is divided into three classes (*que gens omnis in tribus ordinibus divisa consistit*). There are those among them who are called *edhilingi* in their language; those who are called *frilingi*, and those who are called *lazzi*; this is in the Latin language nobles, freemen, and *laeti*." Nithard omitted the slaves since he did not consider them as part of the Saxon people. Rudolf of Fulda put it differently, but his text itself was of a different character. In the introduction to the hagiographic text *Translatio sancti Alexandri*, he offered a scholarly characterization of the Saxons before Christianization and wrote, amongst others, that "those people are divided into four categories, namely the nobility, the free, the manumitted and the slaves" (*quatuor igitur differentiis gens illa consistit, nobilium scilicet et liberorum, libertorum atque servorum*).[253]

R. M. Last and E. J. Goldberg have noted that the *lazzi*, that is, the *laeti*, occupy in Nithard's picture of Saxon society the same position that the manumitted hold in Rudolf of Fulda's account.[254] The conclusion that we are dealing with two different names for the same social group seems probable, although the different literary functions of the two sources call for caution. Rudolf was familiar with Tacitus's *Germania* and used some of its passages in the introductory part of *Translatio*. The stratification of Saxon society into four categories sketched by Rudolf is not, admittedly, a quote from *Germania*, but Tacitus did indeed use there the terms *nobiles*, *liberi*, *liberti* and *servi*. We cannot, therefore, completely rule out that Rudolf's description of the stratification of Saxon society is a recollection from Tacitus's text, and so, worthless from our point of view. I do not believe so, but where belief or disbelief are at stake, every conclusion is in question.

What settles the matter is an etymological argument. Drawing on a study by Leonard Bloomfield, Gabrielle von Olberg states that the term *letus* belongs to the same category as the Gothic word *fralets* (a freedman), the Bavarian word *frilaz* (this was the name for the lowest category of freed men and women) and the Old Saxon word *laz*. They are all derived from the Germanic form *let*, and their

253 Nithard, IV, 2; Rudolf, *Translatio*, p. 675.

254 Goldberg, "Popular Revolt," p. 482f.; Last, "Sozialordnung," pp. 450 ff.

semantic meaning denotes an act of manumission, permission, and setting free.[255] The association of the word *let* with the concept of the freed man or woman must have been still alive in the 8th and 9th centuries if one of the copyists replaced the term *litus* from title LXII, paragraph 1, of the Ripuarian law with the Latin word *libertus*. All in all, the traces and direct evidence found in sources give sufficient grounds to regard the *laeti* as the lowest category of freed men and women.

In spite of the differences between the *aldii* and the *laeti* which Herman Nehlsen has pointed out,[256] these social groups were of a similar character and origin. This is an important circumstance for a comparative analysis. It so happens that it is precisely the norms of Rothari's edict concerning the *aldii* that allow us to understand how the barbarians on both sides of the Alps understood the personal dependencies of the people whom legal historians have called "half-free."

Chapter 224 of Rothari's edict suggests that the *aldii* did not have the right of departure. This was a significant, though not the only, limitation of their freedom. Chapter 235 of the edict states: "It is not lawful for an *aldius* or anyone who has not been made legally independent (*qui amund factus non est*) to sell either land or bondsmen without the consent of his patron, nor may he set any free." Erich Molitor could not believe that an *aldius* could be subject to the *mund*. In his view, only women – free and *aldia* – had the *mund*. Yet *aldius* does appear in chapter 235 in the masculine gender, and the content of the norm also clearly indicates a man (the sale of land!). Finally, from the point of view of the German language, as Gabrielle von Olberg has noted, it is impossible to understand the word *amund* otherwise than "without *mund*" or "free of *mund*."[257]

An *aldius* freed of the *mund* was no longer an *aldius* but a fully free man. Yet this is not what chapter 235 is about. The words *amund factus non est* justified the prohibition of the sale of land and slaves by an *aldius*. The limitation of the rights to manage property resulted from the *aldius's* subjection to his patron's *mund*. A very similar prohibition has been formulated in chapter 204 of the edict, except that it concerned free Lombard women. They remained under men's authority and none "may […] have the right to give away or alienate any of her movable or immovable property without the consent of him who possesses her *mundium*" (*nec aliquid*

255 Bloomfield, "Salic litus," pp. 84, 86 and 94; von Olberg, *Die Bezeichnungen*, pp. 175, 178 and 181–183.

256 Nehlsen, *Sklavenrecht*, pp. 374–376.

257 Molitor, *Zur Entwicklung*, p. 118f.; von Olberg, *Die Bezeichnungen*, p. 85. It is worth adding that chapter 216 of Rothari's edict speaks explicitly of a master's *mund* over the sons of a deceased *aldius*.

de res mobiles aut inmobiles sine voluntate illius, in cuius mundium fuerit, habeat potestatem donandi aut alienandi).

Apart from the prohibition of departure and the limitation of property rights, the *mund* over an *aldius* also included authority over dependant members of the family. This is stated explicitly in chapter 216 of Rothari's edict:

> If any man's *aldius* takes to wife a free woman (one who is folkfree) and acquires her *mundium*, and if after children are born the husband dies, then if the woman does not wish to remain in that house and her relatives want to bring her back to them, they may return the price which had been paid for the woman's *mundium* by him to whom the *aldius* belonged. She may then return to her relatives without the morning gift or any of her husband's property but with any property which she brought with her from her own relatives. And if that woman had children and they do not wish to remain in their father's house, they may leave the paternal property by purchasing their own *mundium* at the same rate as was paid for the *mundium* of their mother. They may then go freely wherever they wish.

The explicit formulation *aldius* (…) *mundium de ea fecerit* indicates that the *aldius* himself, and not his master, paid for the *mund* of his free wife-to-be. It suggests, however, that after marriage, the *mund* over the woman did not belong to her husband but to the master. We cannot in any other way explain the fact that after the *aldius's* death, the widow's relatives, if they wanted to take her back to the family, had to buy back her *mund* from the man to whom her husband belonged as *aldius* (*cuius aldius fuit*) and not from the heirs of the deceased. His sons, that is, his closest heirs, were themselves also subject to the master's *mund* and had to buy that *mund* back in order to be given full freedom and the right to depart. Obviously, they could only redeem themselves after reaching the age of majority, and not as small children. A master's *mund* over an *aldius* extended therefore to his wife, daughters, and his adult sons who were, obviously, also *aldii*.

The information about these matters provided by Rothari's edict is not an isolated case in barbarian Europe. Title IX (paragraphs 11–13) of the law of the Frisians states: "If a free woman, without the consent of Her parents, or the one who is in charge of her, is abducted as wife, [the abductor] pays to her guardian (*tutori eius*) 20 solidi. But if she was a noble woman, 30 solidi. If she is a *laeta*, he must pay 10 solidi to Her lord." In the Carolingian codifications of the laws of the Saxons, Frisians, and Thuringians, the concept of the *mund* was described with the word *tutela*, while the *mundoald* was called a *tutor*. In title IX (paragraphs 11–13) of the Frisian law, the situation is thus the same as in chapter 188 of Rothari's edict. Marriage with a free woman or a widow without prior consent from her guardians, and thus also without the purchase of the *mund*, was a violation of the traditional order of things and of the rights of the *mundoald* who was entitled to composition. While

the father, brother, and any closest of the living male relatives held the *mund* over a free woman, and someone of the deceased husband's relatives over a free widow, in the case of a lawless marriage with a Frisian *laeta*, it was her master and not her father or brother who was the wronged *mundoald*.

A similar rule obtained among the Saxons. Title LXV of *Lex Saxonum* states: "A king's *laetus* is allowed to buy a wife wherever he wishes. He is not allowed, however, to sell any woman." The purchase of a wife and the sale of a woman mean the purchase of the *mund* at marriage or the sale of the *mund* when marrying off a daughter or any other female under guardianship. The sense of this norm is analogous with chapter 216 of Rothari's edict: a Saxon *laetus*, like a Lombard *aldius*, had the right to marry a woman as he pleased, even if she was a free woman, yet only under the condition that he came to terms with her relatives and paid her *mund*. "He bought her himself," which means that he paid for the *mund* over her with his own means. It was not him, though, who as a result became the owner of that *mund*. He was not allowed to "sell any woman," that is lawlessly marry off his own daughter, sister, or his own brother's widow. The decision about their marriage, and in practice the payment for their *mund*, belonged to someone else. The *mund* over a *laetus's* wife and children did not belong to the father of the family but to his master.

The comparative material we have at our disposal allows us – in my view – to formulate a generalization: the barbarian societies perceived the personal dependence of *laeti* (*aldii*) on their masters in terms of a kinship *mund*. This was a strict *mund*, perhaps most similar to a father's *mund* and probably even modeled on a father's authority over an underage son. This authority made the *laeti* dependant and put them in the charge of the master, but it did not deprive them of subjectivity.

According to title L of the law of the Saxons, the master was held responsible for the crimes committed under his orders by his *laeti* or slaves. The master was always responsible for a slave, even if he had nothing to do with the crime. The *laeti*, on the other hand, were themselves responsible for crimes they committed at their own initiative. According to title XXXVI of the law of the Saxons, a person committing a petty theft (less than 3 solidi) had to pay the ninefold value of the stolen property to the wronged and the *fredus* appropriate to their standing to the fisc for violating the peace: a noble man – 12 solidi; a free man – 6 solidi; a *laetus* – 4 solidi. While composition for the wronged had to be paid irrespective of who the wrongdoer was, the amount of composition paid to the fisc depended on the status of the offender – the lower his standing within the Saxon hierarchy, the lower the composition. This rule had obtained among the Saxon tribes since time immemorial, and already in 785 Charles the Great meted out punishment for the disobedience of Christian prescriptions according to that old rule. He who

fails to have his child christened within a year, "is to pay 120 solidi to the fisc if he is of noble stock, sixty if a freeman, and thirty if a *litus*." For a marriage that was seen as illegitimate from the point of view of the Church (*prohibitum vel inlicitum coniugium* – most probably between relatives), a Saxon man of noble birth paid 60 solidi as public punishment, an ordinary Saxon 30 solidi, while a *laetus* 15. The same amounts of 60, 30, or 15 solidi, depending on one's social and legal standing, had to be paid by he who "offers a prayer to springs or trees or groves or makes any offering after the fashion of the pagans and eats it in honor of demons." The proportion is similar in *Capitulare Saxonicum* of 797: "If a nobler person scorns to come to court when impleaded, he is to pay a composition of four solidi, a freeman two, a *litus* one."[258]

Specifying the punishment rates for failure to adhere to the regulations concerning matters of religion and to appear at the judicial assembly, or for theft, the Saxon capitularies and *Lex Saxonum* did not take slaves into account. The reason is obvious: a slave could not be brought to trial. Only those who could be brought to trial are mentioned in these laws as potential payers of public punishments. They were nobles, or ordinary free persons, or *laeti*. What also testifies to the *laeti's* subjectivity is the fact that they could also clear themselves of a charge through a collective oath. According to title XVII of the law of the Saxons, a *nobilis* charged with killing another man's slave could refute the accusation with three oath helpers, while a free man or a *laetus* had to clear himself of charges in an appropriately larger, "more complete" group (*pleno sacramento negetur*). According to the law of the Frisians, if an ordinary free man was accused of murder or incitement to murder, he had to summon as oath helpers one-third more than a *nobilis*, while a *laetus* one-half more than an ordinary free man. Compositions were defined in reverse order: "[…] the fines for [wounds inflicted upon] a noble man, be it for wounds or hits […] will be established at a third part more […] while the fines for "wounds inflicted upon" a *laetus*, be it for wounds and for hits […], are one half lower than those for a free man."[259]

The diversification of wergilds, compositions, and public punishments for a violation of the peace and the required number of oath helpers resulted from a conviction typical of traditional cultures that one's position within the social hierarchy defines "one's moral quality." While it is true that the term *qualitas personae* appears only in the laws of the Lombards and Burgundians, it denotes, however, a conceptual category also present in the ways other barbarian peoples thought

258 CPS, chapters 19–21, p. 6 and CS, chapter 5, p. 12.

259 LFris, title I, 1–9; title II, 6 and title XXII, epilogue.

about social difference. We can see this clearly in the example of the norms of the Frisian law concerning the oath. They are based on a conviction that a *laetus's* credibility is lower than the credibility of an ordinary free Frisian by one-half and lower than the credibility of a Frisian of noble birth by two-thirds. Because the weight of an oath sworn by a man of lower standing was lesser than that of a noble, proportionately more oath helpers had to be summoned. Irrespective of the differences in degree, an accused *laetus* could prove his innocence in court in the same manner as a fully free man or even a noble – by swearing an oath together with his relatives and friends. In cases where solidarity and a collective appearance in court were necessary, a *laetus* was thus treated as a subject and a member of the kinship community.

Title II of the law of the Frisians leaves no doubt about this. It speaks, among others, about the murder of a *laetus* committed at the incitement of a free man, either noble or common. If the killer did not flee the country and could be brought to justice, then the instigator "does not swear anything nor does he pay anything but only suffers the enmity of the victim's kin, until somehow he can return into their grace" (*expositor nec iuret nec leudem solvat, sed inimicitias propinquorum occisi patiatur, donec se cum eis reconciliet*). The killed *laetus's* relatives had thus the right to feud and revenge. They could also, as the words *donec se cum eis reconciliet* suggest, end the feud through reconciliation and accepting wergild from the other party.

Title XV of the Frisian law (and also title I, paragraphs 4, 7 and 10) suggests, however, that these matters were not so simple. A *laetus's* relatives were not the only claimants to wergild. According to title XV (paragraph 3), the composition for a *laetus* was 2 and ¾ of a pound, of which two parts went to the master and one to his relatives. Paragraphs 4, 7, and 10 of title I stipulated otherwise, but only in reference to middle Frisia; he who killed a *laetus* had to pay 27 solidi to the master and 9 solidi to the victim's relatives. Either way, if a *laetus* was killed, his master received the main share of the wergild; he received the amount of the wergild that in the family of a free man would be due to the closest of the relatives.

Those who were a party to a feud were entitled to a share of the wergild. The killed *laetus's* master was thus included along with the blood relatives of the victim in the group of those who were wronged and entitled to revenge. The master's distinguished position within this group resulted most probably from a conviction that his quasi-paternal *mund* made him the man most closely related to the *laetus*. But in a reverse situation – when the *laetus* was not the victim but the killer – this same close relation with the murderer subjected the master to the feud and participation in the payment of the wergild. Title XVIII of the law of the Saxons gave advice on how to avoid such co-responsibility. It was not sufficient to prove by oath

in the presence of 12 oath helpers that the master was not an instigator, accomplice, or confidant of the killer. He also had to free the *laetus* who had committed the crime to thus sever the bond of the kinship *mund* tying him to the *laetus*. Only after the killer was fully freed, was the feud directed only at the killer and his blood relatives excluding his, by now, former master.[260]

The *laeti* at times accompanied their master on their campaigns, but it does not seem likely this was their major role. In the 9th and 10th centuries, and also later, we encounter them in great mansions. We can suppose that in a tribal society the *laeti* were distant predecessors of the personally dependant peasantry. Yet we can and must emphasize that in the traditional cultures of barbarian Europe, kinship relations were the matrix of conceptual categories that were used to describe social bonds and relations of dependence among people. This is how the notion of the *mund* functioned. The term *mund* used in relation to *manumissi* and *laeti* was not a neutral terminological convention but influenced the way relations of dependence were understood. Title XVIII of the law of the Saxons suggests that the bond of the kinship *mund* between a master and a *laetus* was treated deadly (literally!) seriously. If the bond was not severed through an act of complete manumission, a murder committed by a *laetus* obliged the master to pay the lion's share of the wergild or subjected the master, much like the closest relative, to the feud until death at the hands of the legitimate avengers.

The master's quasi-paternal *mund* over a *laetus* was also linked with convictions regarding trust and loyalty. Title VIII of the law of the Saxons stated: "Whoever takes out his sword and attacks another man but is stopped by another person, has to pay 12 solidi as composition or swear an oath on the hand of his *laetus* or on his arms" (*vel in manu liti sui vel sua arma iuret*). As Götz Landwehr has rightly observed, what was at stake here was not a master's co-oath with his laetus. The accused swore an oath by himself, but he vouched for the veracity of his words swearing on his own *laetus* or his own arms. In a similar situation, the Frisian *Additio sapientum* clearly mentions an individual oath sworn not on the hand of one's *laetus* but on the hand of one's relative (*solus iuret in manu proximi*).[261] A comparison and a thorough analysis of the source information about the spread of the custom of swearing an oath on the hand of a relative or on arms among Germanic tribes, led Götz Landwehr to conclusions that should be shared and are also supported by a Slavic analogy. Let us then recall the words of the oath

260 See chapter III, subchapter 2 of this book.

261 Landwehr, "Die Liten," p. 120 and notes 69–89, pp. 133–136; LFris, *Additio sapientum*, title III, p. 98.

written down in the Russo-Byzantine treaty of 971 which allow us to identify in the Slavic pantheon the divine guarantor of the oath on arms and decipher its ominous sense: "And if we fail to carry out the mutual resolutions […] let us be damned by god in whom we believe – Perun, and let us be cut to death by our own arms." Let us also recall Helmold's opinion that the Slavs fear the "avenging wrath of the gods" that pursues the perjurer.[262]

There is very likely no doubt that an oath on arms had the same meaning in the Germanic world as it did in the Slavic, and that its equivalent oath sworn *in manu proximi sui* or *in manu liti sui* had a similar meaning. The man who uttered these words while holding his sword in his hand or holding his relative or *laetus* by the hand, summoned the gods, in case he perjured, to turn against him all that was dear to him and on what he could rely. "Let the most incredible misfortune befall me: let the blows of my own sword fall upon me; let my own relative and my own *laetus* become my enemies." Communication with supernatural forces was a serious matter. Words addressed to the gods, especially calls for their rightful curse, were never wasted. These words suggest that a *laetus* was indeed treated like a relative. He was someone close who could be relied on like one's own sword. It is perhaps for this reason that after the expedition that reached the Elbe in 780, Charles the Great took as hostages from among the Saxons "both the free and the *laeti*" (*accepit obsides tam ingenuos quam et lidos*).[263] This is important information, since the giving and taking of hostages was a guarantee that the mutual obligations between countries and tribes would be fulfilled. It is unquestionable that a *laetus* had legal subjectivity guaranteed by the community of his blood relatives and by the bond of the *mund* that tied him to the master. We need to ask now about the ethnic and political identity of the *laeti*. Were they treated like members of the tribal community?

Titles XXVI and XLII (paragraph 4) of the Salic law testify that the wergild of a Frankish *laetus* was 100 solidi and was thus by half lower than the wergild of a free Frank, but equal to the wergild of a free Roman proprietor. That *Romanus possessor* could belong to the Gallo-Roman aristocracy or hold a more modest position in society. Either way, he was above the *laetus*, who was neither an entirely free person nor the legitimate owner of his land. The real situation of the *laetus* was comparable to that of the Roman *colonus*, who appears in the Salic law as *Roman tributarius* and was protected with a wergild of 62 solidi. A *laetus's*

262 PVL, vol. I, p. 52; Helmold, I, 84, p. 160.

263 *Annales Laureshamenes*, MGH ss, vol. I, p. 31; *Annales Mosellani*, MGH ss, vol. XVI, p. 496 under the year 780.

spilled blood was worth much more than the blood of his Roman equivalent and the same as the blood of a Roman of considerably higher social standing. A similar disproportion can be found among the people who were fully free and well-off. A free Frank was worth twice as much as a free Roman of comparable status. Superiority was based on an ethnic criterion. A comparison of wergilds suggests that the Salic law treated the *laeti* as integral members of the community of the Franks and not as a category of the Gallo-Roman population.

At the time the Salic law was being put in writing, Clovis's monarchy was no longer a union of tribes but a state that assumed succession on the Gallic territories after the Roman empire. The oldest codification of the legal tradition of the Franks is an invaluable testimony to the tribal political organization, but an *ex post* testimony nonetheless. The same can be said about the law codes of other barbarian peoples. Only in the case of the Saxons do we have at our disposal legal acts that were written down literally on the threshold of systemic transformation. Both Saxon capitularies of Charles the Great were instruments of that transformation and constitute a testimony to the conquerors' attempts to impose state order and Christianity on the subdued tribes. Besides the order to be baptized and to follow the rules of the new religion (or face draconian sanctions), the first of these acts, the so-called *Capitulatio de partibus Saxoniae* of 785, includes a decree to build a network of churches on the conquered territories. Chapter 15 charges the local Saxon populations with the costs of providing for those churches. In order to fulfill the needs of the church which they would attend, the inhabitants of each district (*pagenses*), irrespective of their number, had to supply at their own expense a manor and two *mansi* of land. Moreover, they had to provide their church with a slave labor force, also at their own expense but in proportion to the sum total of the inhabitants of the district; for every 120 people –noblemen, freemen and *laeti* – they had to supply one male and one female slave (… *ad unamquamque ecclesiam curtem et II mansos terrae pagenses ad ecclesiam recurrentes condonant et inter CXX hominess, nobiles et ingenuos similiter et litos, servum et ancillam eidem ecclesiae tribuant*).

The communal dimension of these dues indicates that they were borne by an organized group that was familiar with effective cooperation. They had to decide among themselves who was to supply the male or female slave. The others had to unfailingly compensate him for the loss he incurred. So while the expense they had to meet, and the reasons they had to bear it were a novelty, the manner of cooperation on which the extent and performance of the service rendered were based could not be imposed by the newly arrived Franks. The conquerors had to draw on the customary rules by means of which the Saxon tribes had for ages managed to collect the means to pay political tributes or to organize collaboration

when building fortifications. The local communities played a major role here. In chapters 4 and 8 of the *Saxon Capitulary* of 797, these communities are described as the inhabitants of a district (*pagenses*) and simultaneously as a community of neighbors (*convicini*) united by the community of the assembly and the court. These communities thus were territorial units, no doubt the same as those mentioned at the beginning of the *Capitulary* of 797. We read there that the Franks and the Saxons gathered in Aachen when the royal decrees were being announced and expressed a unanimous agreement. The Saxons' representation was emphasized with the information that they had come from many districts (*de diversis pagis*) located on the tribal territories of the Westphalians, Angrivarii, and Ostphalians. The reference to these districts in the formal promulgation of the capitulary indicates that the *pagi* which had until recently played a significant role as the lowest units of the territorial and political organization of the society of Saxon tribes did not lose that significance in the first decades of Frankish rule. The *pagenses* on which the duty to supply land and slaves for the needs of the church was imposed in 785 were not, therefore, randomly created groups.

Slaves were considered as part of the goods that the local community was obliged to render to their local church. The *laeti*, on the other hand, were, together with the edelings (*nobiles*) and frilings (*ingenui*), collectively burdened with this levy. The amount of the levy depended on the overall number of the members of a given group and not on how many edelings and frilings or *laeti* there were. All three categories of the inhabitants of a district constituted an integral whole despite the legal and social differences that divided them. This socially diverse local entity acted as a collective subject not only when economic obligations were being imposed upon it, but also when the tribal community took political decisions.

According to the oldest edition of the *Life of Lebuin*, the Saxons used to hold an annual greater tribal assembly at Marklo on the Weser where a local leaders from each *pagus* would gather together with representatives of the local community – twelve elected edelings, twelve frilings and twelve *laeti* (*solebant ibi omnes in unum satrapae covenire, ex pagis quoque singulis duodecim electi nobiles totidemque liberi totidemque lati*). Recently historians have called this matter in question.[264] Indeed, the vision of the assembly at Marklo as a democratically elected body of the representatives of the three Saxon tribes in no way corresponds to the reality of the times. We do not have to interpret the source this

264 Baaken, *Königtum*, p. 27f.; Wenskus, "Sachsen," pp. 543–545; Landwehr, "Die Liten," p. 122f.; Springer, "Was Lebuins Lebenbeschreibung," pp. 241–249; for a different view, see Schulze, *Grundstrukturen*, vol. I, p. 33 and Fried, *Der Weg*, p. 259. See VLA, chapter 4, p. 793.

way, though. In *Life of Lebuin* nothing is said about a democratic election. It is only the conditioned reflex of a modern European that makes us ascribe such meaning to the word *electi*. Those who, together with a local leader, were to go to Marklo were probably appointed at a local assembly (the *Saxon Capitulary* of 797 describes a local meeting as *placitum pagensium*), but they were not chosen by majority vote but by customary acclamation. In the tribal system, this was a politically momentous act, and it is not without reason that *Vita Lebuini Antiqua* refers to it. The reference to the communities' appointing the representatives to attend the general meeting at Marklo merits belief. The misleading associations that the word "election" evokes have nothing to do with it.

We obviously should not take at face value the information that twelve edelings, twelve frilings and twelve *laeti* from each *pagus* were sent to the meeting at Marklo. This is, however, an interesting lapse, and it is worth wondering where it came from rather than hastily discredit the excellent source. A careful reading reveals that what was at the core of the hagiographic tradition in *Vita Lebuini Antiqua* was an account given by Lebuin's Saxon friends from the Sudergo *pagus*.[265] One of them represented that *pagus* at the meeting at Marklo and was a witness to Lebuin's speech which had nearly led to the missionary's death. The characterization of the annual meeting of the Saxon tribes as an institution which we find in chapter 4 of the *Vita* is probably also based on information from the same witnesses. The untrue information that twelve edelings, frilings and *laeti* were chosen from each *pagus* does not seem a pure invention of the hagiographer but rather a product of misunderstanding. The information which the Anglo-Saxon monk who wrote down Lebuin's story likely heard from the missionary's Saxon friends could have sounded similar to chapter 15 of the Capitulary of 785, with which we are already familiar and which raises no doubts. It was emphasized there that the entire local community (*pagenses*) – *nobiles et ingenui et liti*, had to supply provisions for the church. The Saxon informers probably told Lebuin's hagiographer that the designation of 12 men to attend the assembly in Marklo was approved by the entire local community – the edelings, the frilings and the *laeti*. The hagiographer did not make anything up. He merely over-interpreted the words he heard from his Saxon interlocutors.

The Life of Lebuin suggests that the presence of the representatives of the local communities at the general meeting was treated as a condition of representation. Charles the Great treated this matter in a similar way at the ceremonial promulgation of the *Capitulary* of 797. The king of the Franks made every effort

265 See chapter VI, subchapter 2 of this book.

to make the conquered Saxons acknowledge him as heir to the prerogatives of the tribal assembly. This is why he emphasized that Saxons from different *pagi* should come to Aachen (*ex diversis pagis*) and that they unanimously agree to the decrees proclaimed there. The new authorities invoked traditional legitimization. This is corroborated by *The Life of Lebuin*. The local communities were, as can be seen, an integral element of the tribal political collectivity. It is likely that the *laeti* did not go to Marklo and they surely did not have their own representation there. Yet they did take part in the meetings of their own *pagus* and were an integral part of the local community that selected the representatives for the annual meeting of the Saxon tribes at Marklo. According to Nithard, "all the Saxon people" consisted of three estates: edelings, frilings and *laeti*. The term *gens* which Nithard used had an ethnic and political significance in this context, and it is not without reason that slaves fell outside the realm of a "people" thus understood. The similarities of meaning revealed by the sources allow us to conclude that the *laeti* were considered a part of the tribal community. Indeed, this was not a community of equals and the *laeti* held the lowest position within it. The master's *mund* made them dependant. They were under their masters' authority like women and children. But – similarly to women and children – they were a part of the family, the clan, and the tribe. Belonging to the community assured their subjectivity.

3. Social Diversification among Free Tribespeople

In this book, I am not following the academic custom that makes it obligatory to precede an analysis of sources with an overview of the scholarship on the subject, that is, a systematic summary of relevant research. I assume that an expert in the field can look up such scholarship without my help, while a non-professional reader interested in the history of medieval societies may not necessarily be interested in the history of modern medieval studies. In fact, these are two different areas of research. Nineteenth- and twentieth-century medieval studies scholars did indeed study the Middle Ages, but the history of their discipline belongs to the history of the culture of the 19th and 20th centuries. I try not to confuse reflection on this otherwise fascinating subject with an analysis of the social system of the barbarian tribes. At times, however, a historiographic excursion, a glance at the grand disputes among scholars divided by their worldviews and by their understanding of the distant past seems necessary. If we are to examine the situation of the free people in the traditional societies of barbarian Europe, we need to mention that in the 19th and 20th centuries, the most significant disputes among German historians of the medieval social and political systems concerned precisely this issue.

For German medieval studies, the 19th century was a time of abundance. It gave rise to critical editions of the most fundamental sources and to coherent interpretations shaped under the obvious influence of evolutionism. In the research on the history of the political and social systems of the Germanic peoples of the early Middle Ages, the remarkable achievements of nineteenth-century historiography came to be reflected in the classic syntheses by Georg Waitz, G. L. von Maurer, Otto von Gierke, and the most distinguished master of that school – Heinrich Brunner.[266] Obviously their concepts were not identical and their scholarship was not limited to research on the social condition of the free, but the views they shared were so similar that later scholars did not hesitate to bring them under a common denominator and give these concepts a common name: "theory of the common free men" (*Gemeinfreienlehre*).

Classical historiography did not question the leadership role of the aristocracy within the political systems of the Germanic tribes and of the early Romano-barbarian states, yet it assigned a crucial role to the free common people. The leading scholars, from Möser to Brunner, unanimously thought the free common people to be the core of the traditional society, a basis of tribal organization and a fundament of royal power. It was not only about the numerical power of the free small-holders, but also about their role in an army based on general levy, and especially about the political significance of their participation in assemblies and their direct public subjection to the king. According to the historians of the classical school, the process of the degradation of the free common people dated back to the 9th century and was linked with the erosion of the public structures of the Carolingian state brought about by feudalization and immunity privileges.

Later critics were right to point out the anachronistic interpretation of the political system of the Germanic tribes in terms of the democracy of the classical authors of nineteenth-century historiography. They also rightly observed a relation between the works of the old masters and their democratic liberal views. For the German historians of this new school, this relation became all the more noticeable, since they themselves no longer shared the canons of the liberal viewpoint or democratic illusions. The generational experience of National Socialism had a profound impact on their way of thinking about their own times and history. Adolf Waas openly stated this. In his eyes, "the bankruptcy of liberal thought" after 1933 justified a critical attitude to the vision of history created by the historians

266 Waitz, *Deutsche Verfassungsgeschichte*; Maurer, *Einleitung* and *Geschichte der Markenverfassung*; Gierke, *Das deutsche Genossenschaftsrecht*; Brunner, *Deutsche Rechtsgeschichte*.

of the era that had just ended. What particularly deserved criticism was the notion of freedom so often encountered in the works of the classical school.[267] The new school created a new image of the Germanic past in which the category of power (*Herrschaft*) played a fundamental role. According to the co-founder of this school, Heinrich Dannenbauer, only the strongest could enjoy full freedom in the traditional societies of the early Middle Ages because the "power of the mighty" (*die Herrschaft … einzelner Mächtiger*) was the primordial state (*Urzustand*) of those societies.[268]

It is along these lines that E. F. Otto and other scholars of the new school in his wake re-defined the category of the free (*liberi*, *ingenui*, *frilings*) found frequently in sources. The term "free" would refer here to dependant people protected by the power of the mighty or – if they lived on the king's land – by the power of the king. Theodor Mayer, Heinrich Dannenbauer, and Otto Brunner also redefined the notion of the medieval state, depriving it of its territorial character as we understand it today. In their view, the early state was a system of personal relations based on the private power of the aristocracy and the similar power of the king. Those free people who enjoyed a modest social standing, had their own households, and were beyond the reach of the Church and the secular aristocracy were understood to be settlers on the king's land. Because they used the king's land, they were subject to the king's authority and obliged to render military and other services for the benefit of the ruler. This is how, in opposition to the "theory of the common free men," the "theory of the *Königsfreie*" was born in the 1930s and 1940s.[269]

It was Fedor Schneider who was the precursor of this theory. In 1924, he published an extensive work devoted to the Lombard *arimanni*. The Germanic word *herimann* (from *heri* – army and *mann*– man), in its Latinized version – *arimannus*, was the general name for Lombard warriors used in Rothari's, Liutprand's, and Ratchis's edicts and in the documents of the 8th century. Relying on a retrogressive

267 Waas, *Die alte deutsche Freiheit*, pp. 6f. and 116. See also his *Herrschaft und Staat*, pp. 3 and 7, where new research priorities were set off against the liberal historiography of the 19th century. These priorities included: "national legacy," the "Germanic factor," and "the notion of the purity of races and cultures." Also the leading founder of the new school, Brunner (*Land und Herrschaft*; the first edition from 1939), criticized the tacit ideological assumptions of liberal historiography without hiding his own different assumptions. On this, see Graus, "Verfassungsgeschichte," p. 547.

268 Dannenbauer, "Adel, Burg und Herrschaft."

269 Otto, *Adel und Freiheit*; Waas, *Freiheit*; Brunner, *Land und Herrschaft*; Mayer, "Die Entshtehung des 'modernen' Staates;" "Die Ausbildung" and "Die Königsfreien;" Dannenbauer, "Adel, Burg und Herrschaft;" "Adelsherrshcaft" and "Hundertschaft."

use of later sources, at times even thirteenth-century ones, and on audacious conclusions drawn from toponyms, Schneider supplied the term with a special meaning. These maneuvers and historical imagination led him to the conclusion that the kings of the Lombards – after the conquest of Italy and the seizure of imperial and aristocratic property – created special colonies on the royal land for army settlers at strategic sites. The *arimanni* we can find in the Lombard edicts, documents from the 8th century, and the Carolingian capitularies were, in Schneider's view, such settlers. Schneider gave the name of *arimanni* to those putative colonies and searched for traces of such an institution in Italian place names. According to Schneider's theory, the *arimanni* were charged with the duty to participate in campaigns and assemblies and, in Carolingian times, to build bridges because they did not have their own land but only used the land of the king.[270]

Fedor Schneider's work became a pillar of the theory of the *Königsfreie* and a model for its followers. Subsequent scholars depicted the social relations in various parts of the Frankish state on the model of the Schneiderian *arimanii*.[271] Karl Bosl placed the entire free population, described in the sources as *liberi* or *ingenui*, within such a pattern: "We understand those *liberi*, that is, free men, to be armed military settlers and grubbers whom the king or duke situated on the territory of his state in places of strategic significance, assigning to them for inheritable use one-yardland holdings. Those 'free men' paid the king an inheritable rent for the land used […], and also a war levy if they were not at the moment going on a campaign." Heinrich Dannenbauer put forward a similar view, yet in the form of a definition: "The *Königsfreie* are, *as is commonly known* [my emphasis – K.M.], people who inhabit the king's land, and are personally free but limited in their property rights, obligated to serve and render services to the benefit of the ruling king in the form of rent and, above all, military and other services of military character."[272]

Dannenbauer considered the levies paid to the monarchy by free small-holders – mentioned in the Carolingian sources – as "a distinctive emblem (*Leitfossil*) allowing us to identify the Frankish colonies of military settlers" because "*census*, *regius*, *tributum*, and *fiscus* and whatever else these levies were called were services rendered by the free settlers to the king in exchange for the use of royal land."[273] The idea that levies paid by the free population could constitute public dues for

270 Schneider, *Die Entstehung von Burg*; see also his "Staatliche Siedlung."
271 Bog, "Dorfgemeinde;" Bosl, *Franken um 800*.
272 Bosl, *Fröhformen*, p. 172f.; Dannenbauer, *Königsfreie*, p. 330.
273 Dannenbauer, "Freigrafschaften und Freigerichte," in Dannenbauer, *Grundlagen*, p. 319f.

the benefit of the state and not a rent for using someone else's (the king's) land did not occur to the architects of the theory of the *Königsfreie* because it did not accord with their understanding of "a state of personal relations." Also, military service was treated by Dannenbauer as public dues imposed in exchange for settlement on royal land. Belief works miracles. Dannenbauer really was convinced that in ascertaining the existence of colonies of military settlers where the historical sources mentioned levy paid to the fisc or mandatory military service, he was drawing a conclusion from the source material rather than deducing from his own assumptions.

The theory of the *Königsfreie* was a product of historical imagination linked with the intellectual climate of the 1930s and 1940s. The influence of the experiences of those years on the way the founders of this theory thought was often pointed out to them, as was their political activity for the Third Reich.[274] These circumstances, no doubt significant in the cultural history of the 20th century, have nothing to do with verifying the theses about the political system of medieval societies. Every way of thinking about the past is linked with a way of evaluating and understanding the contemporary world. The discrepancy among value judgements, even if these value judgements reveal themselves in how significance is estimated, is always present in debates about the interpretation of historical processes. This is why these debates can never be fully resolved. Perhaps in such a situation, instead of dismissing certain false statements which result from a different world view, we would do better providing a report of disagreements.

This does not mean that a historian is allowed to do anything he or she wishes. In our profession, the boundaries of relativism are demarcated by the commonly accepted rigors of the research process. This is our procedure of verification; claims that do not reckon with the discipline's rules of interpretation of the source material are rejected as false. The shortcomings of the theory of the *Königsfreie* stemmed not from its ideological underpinnings, but from its inconsistency with the sources which could not be removed without a violation of the disciplinary

274 Swiss historian Wernli (*Bauernfreiheit*, p. 319f.) has done so in a scathing manner. For objective and detailed comments, see Oexle, *Sozialgeschichte*. Brunner's, Mayer's, and others' political involvement included, in accordance with the declarations about the contribution of historical studies to the war effort, their scholarly activity as well. For this reason and under the pressure from Bavarian politicians and officers of the American army of occupation, Mayer was deprived of chairmanship at the MGH after the war, yet both he and Otto Brunner maintained a strong position in the academic world of Western Germany. See *Deutsche Historiker im Nazionalsozialismus*, ed. by W. Schulze and O. G. Oexle, Frankfurt a/M. 2000, pp. 16 and 71–73.

rules of the game. At times, this inconsistency was shrouded in silence, while inconvenient information and even troublesome categories of sources (the written laws of the barbarians) were disregarded. At times they were subject to glaringly stretched interpretative gymnastics. Or, the meaning of a primary source was balanced out with suggestive rhetoric. These were not solid foundations.

In the 1960s and 1970s, when the scholars of a new generation undermined the authorities of the 1940s, the theory of the *Königsfreie* did not survive the test of verification. In Italy, Giovanni Tabacco subjected Fedor Schneider's claims about the *arimanni* to scathing criticism. Tobacco has proved that in the royal edicts of the 7th and 8th centuries the Latin word *exercitales* or its Germanic synonym *arimanni* was used to describe the entire population of free male Lombards. That was because all of them, irrespective of their wealth or poverty, were warriors. Even *minimi homines exercitales* who had neither land nor a house of their own, but inhabited private or Church estates as tenants, were subject to campaign mobilization as infantry archers despite their poverty. The mandatory military service had nothing to do with their supposed settlement on royal land, but was required of every free man from the Lombard tribe. A substantial majority of the *arimanni* did own land, and their public relation to the king did not resemble land dependency. Neither the 7th and 8th century sources nor those written in the times of Carolingian rule mention special colonies of royal military settlers. Nothing suggests the existence of such an institution.[275]

Tabacco's argumentation was irrefutable. Not a single voice spoke in defense of Schneider's theses. The Lombard pillar and prototype of the theory of the *Königsfreie* proved a paper construct and was quietly laid to rest. In Germany, Tobacco's works did not at first find any resonance, a matter which can only partly be explained by the language barrier. No defense of the theory of the *Königsfreie* against E. Müller-Martens's criticism was raised, either, though his book from 1963 was commonly regarded as Marxist (he was from the GDR).[276] Soon after, however, scholars from the Federal Republic of Germany challenged the concepts offered by Dannenbauer, Mayer, and Bosl. Irrespective of the influence that the change of the intellectual climate in 1960s Europe may have had, critics exposed the gap between the theory of the *Königsfreie* and the source materials.

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275 Tabacco, *I liberi del re* and "Dai possessori;" see also the polemic between Tabacco and Bertolini in SCIAM, vil. 15, pp. 538 ff.

276 Müller-Martens, *Karl der Grosse*.

In 1969, Hermann Krause argued convincingly that the *liberi* of the Bavarian law could not have been, as Bosl claimed, settlers on royal land because they held allodial ownership over their own inherited estates. The codifier put it explicitly in titles II (paragraph 1) and VII (paragraph 4). Moreover, Krause noted that in the Bavarian law the *liberi homines* constituted a socially diverse group. It included both the well-to-do (*procers*, *primati*) and the less affluent (*minores personae*), and even "people who were free though poor" (*liberi*, *quamvis pauperes*) who were also entitled to property rights to land unless someone of his own free will renounced his patrimony. Neither *Lex Baiuvariorum* nor other Bavarian sources of the 8th and 9th centuries mention military colonists settled on royal land.[277]

Hans K. Schulze's works, published between 1973 and 1978, brought a fundamental revision of the theory of the *Königsfreie*. In a book devoted to the Carolingian organization of the counties east of the Rhine, he refutes Dannenbauer's theses about the *centeni* as colonies of military settlers on royal lands, proves the territorial character of the *comes* districts, and undermines the idea of a "state of personal relations." Moreover, Michael Gockel's research on which Schulze drew, challenged the interpretation of the levies paid by the free population to the fisc as, supposedly, rent paid for land use. He offered compelling arguments supporting a public origin of such dues. Almost simultaneously, Heike Grahn-Hoek proved that there was no legal status division into the rich and the rest of the free population of fellow tribesmen among the sixth-century Franks. Finally, in his dissertation, initially intended as a rejoinder to Müller-Martens's book, Johannes Schmitt undertook a systematic review of all the information on free people (*liberi*, *ingenui*, *franci*) in the Carolingian sources, finding not a single mention that could be argued to refer to the *Königsfreie*. H. K. Schulze spelled it out when he deemed the "*Königsfreien*" an entity postulated by scholars but absent in the sources, and hence fictional.[278]

Michael Borgolte bemoaned the fact that the destruction of the theory of the king's freemen would cause regress within medieval studies, because it would tempt scholars to return to the coherent and logically charming constructions

277 Krause, "Die Liberi."

278 Schulze, *Grafschaftsverfassung*, pp. 319 ff, 340f. and *passim*; Gockel, *Karolingische Königshoffe*, pp. 96ff.; Schulze, "Rodungsfreiheit," pp. 542–544; Grahn-Hoek, "Fränkische Oberschicht;" Schmitt, *Untersuchungen*; Schulze, "Reichsaristokratie," p. 365 and 367f. See also works by Swiss historians, also highly critical of the theory of the *Königsfreie*: Liver in ZRG GA 76, 1959, pp. 369–379; Köbler, "Die Freien;" Schott, "Freiheit."

of the classical school.[279] What underlies this fear is the tacit, yet questionable, assumption that the theory of the *Königsfreie* represented an advancement in medieval studies. Yet the concerns that we would return to Maurer seem in vain. We live in a different world, and it is hard to assume that anyone would attempt to read the Germanic or Slavic institutions of the assembly as a prototype of democracy. We cannot look at the past through Heinrich Brunner's spectacles, although many of his interpretations have withstood critique. A return to the classic conception of *Gemeinfreien* is no longer possible. We cannot resuscitate the theory of the *Königsfreie* either. However, no new doctrine has come to replace it. The critics who have verified the negative claims made by Heinrich Dannenbauer, Theodor Mayer, and Karl Bosl agree that there is no clear-cut concept of the meaning of the words *liberi* or *ingenui* in the sources. The community of the free fellow tribesmen was socially diverse and the models of this diversification and its legal forms differed among the different peoples.[280] I share this view, though it is difficult to consider it a theory. The shrapnel of destroyed doctrines remain on the battlefield where the disputes about the free population in the traditional societies of the Germanic world raged. There is no need to return to them.

The term "common free men" (*Gemeinfreie*) is a sort of armchair concept created by scholars, yet it does have a foundation in the conceptual system of some of the peoples. Using this term, we assume that the free population was divided into two legally distinct categories: those of noble birth and the common people. This division can indeed be found in the laws of the Saxons, Frisians, and Thuringians. Higher wergild, higher compositions, and greater credibility distinguished in those laws those who were of noble birth (*nobiles*, edelings) from the rest who were simply called free (*liberi*, *ingenui*, frilings). Belonging to the category of edelings was determined by one's birth, which means that the frilings who did not come from noble families could in fact be described as free in a common way. In this case, a *liber* is indeed *Gemeinfrei*.

We can speak of common free men, however, only where there was a social and legal division into an aristocracy and the commons. Grahn-Hoek argues that such a division did not exist among the Franks between the 6th and 7th centuries.[281] The wealthy did of course exist there, but they did not constitute a closed, legally separate group. The main criterion of the legal condition of people in *leges barbarorum* was the amount of wergild. Both in the Salic law and the Ripuarian

279 Borgolte, *Geschichte der Grafschaften*, p. 19.

280 Krause, "Die Liberi," p. 68f.; Schmitt, *Untersuchungen*, p. 245; Schulze, "Reichsaristokratie," p. 367.

281 Grahn-Hoek, "Frankische Oberschicht," pp. 27–38 and *passim*.

law, all free Franks were entitled to the same wergild: 200 solidi. People holding public offices or serving in the king's retinue were protected with a triple wergild, but this did not apply to their children or them themselves if they left the office or the king's retinue. Such greater protection resulted from the office one held and not from one's birth. In the Merovingian state, the principle of tripled wergild with respect to holding an administrative office or to service performed in the king's retinue applied not only to free Franks but also to free Romans, and even to the king's *laeti* (*pueri regis*). The rank of the office held did not matter at all. A royal dignitary, a *grafio*, and even the lowliest collector (*sacebaro*) were protected by a tripled wergild.[282]

There is no reason to doubt that a political and financial elite existed among the Franks. It consisted of wealthy clans that more or less effectively pretended to an actual monopoly on holding the highest offices in the state. However, the members of such clans were not entitled to more rights than other free fellow tribesmen due to their birth. This is why *Lex Salica* and *Lex Ribuaria* did not operate in terms of the notion of aristocracy and did not have a separate name for this social group. All free Franks, from the most influential and wealthy to the poorest commoner, were described with the same term: *ingenui* (*liberi*). The Latin name for the frilings sounded the same in the law of the Saxons, and yet it did not mean the same thing. Among the Franks, the notion of the free had a wider scope, and the social content which the term *liberi* denoted was more diversified. Contrary to Heinrich Brunner, the *liber* of the Salic law did not correspond to the historiographic notion of the *Gemeinfrei*. To use the category of common free men in relation to those peoples who did not legally distinguish an aristocracy from the commons, in fact, makes no sense.

The *Russkaya Pravda* did not divide the free into an aristocracy and the commons, either. In the first article of the *Short Russkaya Pravda*, it was emphasized that the amount of wergild is the same for all "men," that is, free men irrespective of the social differences amongst them. If a victim's relatives refrain from revenge, they are entitled to "40 *grivna* for the head [of the man killed]," "if he be a rusin, or a grid', or a merchant, or a boyar's official, or a mechnik, or an exile, or a slovenin, then 40 *grivna* for the murdered." A slightly later article of the *Short Russkaya Pravda* and a new edition of article 1 from the *Vast Russkaya Pravda* introduced a doubled wergild for the killing of the king's officials, but their elevation was linked, as in the case of Salic and Ripuarian Franks, with the function they performed and not with inherited social and legal status.

282 PLS, title XLI, 1, 5, 8 and 9; title XLII, 4; title LIV, 1, 2 and 3 and title XIII, 7.

There was, in fact, no division into an aristocracy and the commons in the law of the Bavarians, either. The representatives of the norms of this law were described as free fellow Bavarians (*liberi Baiuvarii*). Irrespective of whether they were wealthy (*proceres*, *primati*), or modest, or even simply poor (*minores*, *pauperes*), they were entitled to the same wergild of 160 solidi. Only five clans (*genelogiae*) specified by name – Hosi, Draozza, Fagana, Hahilinga, and Anniona – were rewarded with a double wergild because in the Bavarian political hierarchy they occupied a position just after the ducal dynasty of Agilolfings (*Isti sunt quasi primi post Agilolfingos qui sunt de genere ducali; illis enim duplum honorem concedamus et sic duplam conpositionem accipiant*).[283] The cited formulation – "we grant a double honor, and, therefore, they receive double compensation" – is in keeping with the style of the capitularies, which would seem to point to an innovation introduced into the law of the Bavarians at the initiative of the king of the Franks. Leaving aside speculations on the origin of those five clans, we can assume that we are dealing here with the first step towards the legal distinction of an aristocracy. In this case, these clans were by birth entitled to a wergild of 320 solidi, which was thus an inherited privilege. But this privilege was enjoyed by only a very small group that could not yet be described in any other way than by reference to the names of the five "genealogies." *Lex Baiuvariorum* did not have a collective name for those noble families (*nobiles* or *adalinghi*), because in the conceptual system of that law there was no place for a category of hereditary aristocracy. Thus, similarly to the laws of the Franks, in the law of the Bavarians the term *liberi* was not a synonym of the armchair concept *Gemeinfreien*.

The laws of the Franks and the Bavarians, as well as the *Russkaya Pravda* on one hand, and the laws of the Saxons, Thuringians, and Frisians on the other, rendered, as can be seen, the notion of free commons in two diametrically opposed ways. Between these two poles was the system of wergilds among the Alemans, Burgundians, and Lombards. It was based on the principle of gradation. The names of the categories themselves, to which lower or higher amounts of wergild were assigned, reflected a conviction that the differences in social positions among the free common men were differences of degree. *Pactus Alamannorum* thus distinguished "a superior Aleman" (*Alamannus primus*), "an average Aleman" (*medianus Alamannus*) and "a minor Aleman" (*minoflidus*). Their wergilds were 240, 200, and 160 solidi, respectively, for men, and 480, 400, and 320 solidi, respectively, for women.[284]

283 LBaiuv, title III, 1.

284 PA1, 77–81. In the manuscript, the *minoflidus* is mistakenly assigned a wergild of 170 solidi, but this mistake is easy to correct by comparing it with the doubled

We can find a similar system of social gradation among the Burgundians. It relates to a very old tribal legal tradition that is, at any rate, earlier than the changes introduced by the royal codification. In title II, paragraph 1, of the Burgundian *Liber constitutionum*, a rule was introduced according to which the murderous killing of "a native freeman of our people" could not be paid for otherwise than with the murderer's blood. This eliminated the possibility of wergild. At the same time, the codifier forbade the victim's relatives to take revenge on members of the killer's family. They were to pursue and kill only the culprit and no one else. In title II, paragraph 2, an exception to this rule of "death for death" was introduced: "if violence shall have been done by anyone to any person, so that he is injured by blows of lashes or by wounds, and if he pursues his persecutor and overcome by grief and indignation kills him," – then he does not pay for that death with his own head. He has only to bring forward credible witnesses who will confirm his version. He then has to:

> …pay to the relatives of the person killed half his wergild according to the status of the person (*medietatem pretii secundum qualitatem personae*): that is, if he shall have killed a noble of the highest class (*obtimatem nobilem*), we decree that the payment be set at one hundred fifty solidi, i.e., half his wergild; if a person of middle class (*in populo mediocrem*), one hundred solidi; if a person of the lowest class (*pro minore persona*) seventy-five solidi.

The redemption for murder mentioned here (literally, the "price") is nothing other than wergild. Though in the preceding paragraph, no other compensation than the murderer's death was allowed, the amounts of wergild were, as can be seen, well known. They must have been in force long before King Sigismund's codification of 517 took a direction opposite to the other *leges barbarorum* and introduced the rule of "death for death." Title II, paragraph 2 not only introduces an exception to this rule, but also provides information about the relations that prevailed in the remote past. This title allows us to state that in the 5th, and possibly in earlier centuries, the wergild of a Burgundian *optimate* was worth 300 solidi, the wergild of an "ordinary" Burgundian – 200 solidi, while that of a minor Burgundian (*minor*) – 150. Both the three-level scale and the names used to describe the social positions derived from the tribal tradition. Unfortunately, we know these names only in their Latin versions. We can see, however, that the Burgundians used names that reflected an idea of gradation. *Optimates* literally means "the best." The word *nobilis*, added to *optimates* in title II, paragraph 2

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wergild of women (*femina minoflidus* – 320 solidi) and with title LIX of the law of the Alemans.

does not seem to be a social and legal term but a laudatory epithet ("noble"), since in subsequent passages in the *Liber constitutionum*, Burgundians of the highest social standing are referred to as *optimates*, and not *nobiles*.[285] The term *mediocre* means the middle position on the social ladder, while *minores* (literally "minor") refers, as in the case of the Lombards, to those in the lowest position.

It was the "quality of the person" that determined the amount of wergild and the place of a free person on the social ladder in the laws of the Burgundians and Lombards. Rothari's edict gives, alongside the Latin expression *secundum qualitatem personae*, also the vernacular prototype: *in angargathungi*. This was an old, Germanic notion, an important element of the traditional understanding of social structure. A careful analysis of the Lombard edicts offers a chance of identifying the criteria according to which that "quality of a person" was evaluated.

Rothari's edict did not specify the amounts of wergild. There were different rates, and the codifier only stated that the wergild due had to be determined on a case-by-case basis. In chapter 11, we can read that a murderer "shall pay the victim's wergild, according to as he is valued, as composition" (*conponant ipsum mortuum, sicut adpraetiatus fuerit, id est wergild*). This was not about negotiations between the parties involved, but an estimation according to the "quality of the person." Chapter 14 states that a murderer of a free person has to pay for his deed according to *angargathungi*. Chapter 48 likewise states: "In the case where someone gouges out another man's eye, composition shall be computed as if for death *angargathungi*, that is, according to the rank of the person" (*pro mortuum adpretietur, qualiter in angargathungi, id est secundum qualitatem personae*). The culprit should pay him half of the estimated wergild. The same formulation is repeated in chapter 74 that closes a long list of compositions for beating and wounding; if it happens that the victim dies within a year as a result of the wounds inflicted, "then the one who struck the blow shall pay [for the death] as *in angargathungi, id est*, according to the quality of the person."

All these rules applied to men. For the intentional murder of a free woman, Rothari's edict stipulated an exorbitant fine of 1200 solidi, half of which was to be paid to the king, and the other half to the victim's relatives. An estimation according to the quality of the person was here out of the question. Such estimation took place only in the case of unintentionally causing a miscarriage: "if the woman is free and lives, then her value shall be measured in accordance with

285 See LC, XXVI, 1 (*obtimatus Burgundio* and his equivalent among the Romans – *nobilis Romanus*) and LC, title LI (*quicumque Burgundio, obtimatus aut mediocris*); see also Praefatio Gundobadi (*coram obtimatibus nostris*).

her nobility (*apdraetietur ut libera secundum nobilitatem suam*), and composition for the child shall be paid at half the sum at which the mother is valued. But if the mother dies, then composition must be paid for her according to her birth (*conponat eam secundum generositatem suam*) in addition to the payment of composition for the child killed in her womb. But thereafter the feud shall cease since the deed was done unintentionally."[286]

What follows from the words *apdraetietur ut libera secundum nobilitatem suam* is that *nobilitas*, that is, nobility, was an attribute characteristic of all free Lombards – both men and women – but not in equal measure. To put it differently, among the Lombards, nobility was subject to gradation. An evaluation of the deceased woman according to the degree of her nobility was used to determine her wergild, and in effect meant an evaluation according to the quality of the person. The expression *secundum generositatem suam* (according to birth) which was used, not without reason, in reference to women, had a similar meaning. In case of manslaughter, their worth was a derivative of the wergild of the men in her family.

The fact that Rothari did not define the rates of wergild in his edict meant that commonly known, though not fixed in writing, customary norms concerning this case were left in force. Everyone interested, and even more so a judge, knew how to evaluate the quality of the person and determine what the wergild appropriate to that quality was. We would give much to have that knowledge, as it came from the living tradition of oral law. Unfortunately, it is for this very reason that it was not written down in the oldest edict. King Liutprand did so, only 81 years later.

In 721, Liutprand tightened the law concerning the wergild for intentional murder. From that time, the murderer had to give all his property to the victim's relatives, even if it was worth significantly more than the traditional value of the wergild. However, "if any freeman in self-defense kills another freeman and it is proved that he killed the man while defending himself, he shall pay composition for him just as is provided in an earlier law established by King Rothari of glorious memory." In 724, Liutprand returned to that matter in order to specify the rules from Rothari's times in writing:

> I am mindful of the manner in which we have already established that anyone who kills a freeman shall lose his entire property and that he who kills a man while defending himself shall pay composition according to the quality of the person. Now we set forth the means whereby that quality shall be determined (*quomodo sit ipsa qualitas consideranda*). For it

286 LL, Ro, chapter 75, p. 28.

> is the custom that the least of men who is a warrior (*minima persona, qui exercitalis homo esse invenitur*) shall have a wergild of 150 solidi and he who is of the first class (*qui primus est*) shall have the wergild of 300 solidi. Concerning our *gasinds* [the Lombard equivalent of a vassal/liegeman-K.M.], we decree that anyone who kills even the least of these (*minimissimus in tali ordine*) shall pay 200 solidi as composition because he serves us. Indeed this amount for a more important person (*maioris vero*) may increase to 300 solidi according to the quality of the person as determined by our opinion or that of our successors.[287]

Rothari affirmed the principle of estimating the wergild according to the quality of the person, yet he did not specify any numerical values and thus kept the old custom in force. When in the edict of 724 Liutprand specified the minimum and maximum amount of wergild on the basis of the old custom (*consuitudo enim est*), he had in mind the oral legal tradition. But what in Liutprand's chapter 62 related to that tradition was only that which referred to the Lombard warriors. The separate norm concerning the *gasinds* was of a different character: it was not based on the old custom but reflected the king's will (*de gasindiis vero nostris volumus*). This is a clear indication that the legal tradition was modified in this matter. The king wanted to secure a privileged position for his *gasinds*, raising their minimum wergild and reserving the right to evaluate the personal quality of each at his own discretion. The difference that arose between the king's *gasinds* and the rest of the free Lombards had to be specified in writing in the edict. We have the written code of this old legal tradition most probably thanks to the innovation that the king introduced to it.

Wergild defined in accordance with "the quality of the person" was an institution of Lombard law alien to the Roman law. For this reason alone, chapter 62 of Liutprand's edict that specified "the means whereby that quality shall be determined" concerned exclusively the Lombards. At its beginning, the chapter tells us that it will deal with the wergild of a free person, but already in the next sentence the term "free man" (*liber homo*) is replaced with the term "warrior" (*exercitalis homo*). This should not surprise us since the terminology used in the edicts was based on the axiom that every free Lombard was a warrior. It is already in Rothari's edict that the expressions "slaves of other men" (*servi aliorum hominum*) and "slaves of other warriors" (*servi aliorum exercitalium*) were used interchangeably as synonyms. Liutprand, too, interchangeably used the expressions "free man" (*quis liber homo*), "a Lombard" (*quis Langobardus*), and "warrior" (*eremannus, exercitalis*).[288]

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287 LL, Li, chapter 62 from 724, p. 158; see also Li, chapter 20 from 721, p. 142.

288 LL, Ro, chapter 371 and 373. In 713 (LL, Li, chapters 1–4, pp. 128–130) Liutprand modified the norms of the inheritance law codified in Rothari's edict (chapters 158–160). These norms concerned free Lombards. But while Rothari limited himself to the

The expression *minima persona qui exercitalis homo esse invenitur* in the edict of 724 seems to suggest a specific procedure; before it was decided that the "least of men who is a freeman" is entitled to the wergild of 150 solidi, it was necessary to check and determine if the person was a warrior. Ottorino Bertolini concluded from this that not every free man was a warrior, after all, since some due to poverty were unable to afford appropriate equipment.[289]

Bertolini's argument should be rejected on two grounds. Firstly, chapter 62 of Liutprand's edicts concerns every free man whose wergild is defined in accordance with the law of the Lombards. The codifier was explicit about this and allowed for no exceptions, for instance, on grounds of poverty. Secondly, in chapter 83 of Liutprand's edicts, the "least of men" appear again as those "who have neither houses nor land" (*minimi homines qui nec casas nec terras suas habent*). They were, however, obliged to take part in military campaigns; they fought on foot. They were armed – as was written in chapters 2 and 3 of Aistulf's edict of 750 – only with an arch and arrows, yet they had to go to war. This obligatory military service was based on ethnic and legal, rather than property, criteria. Every free Lombard was a warrior. *Minima persona*, that least significant person lowest on the social ladder who is, however, a warrior (*qui exercitalis homo esse invenitur*), corresponds exactly to those *minimi homines* without land of their own who must, nevertheless, go to war (chapter 83).

The reference in chapter 62 to the inquiries into whether that *minimus homo* was or was not a warrior indeed suggests that there were some *minimi homines*, or even some land and house owners, who were free but were not warriors. The procedure of estimating the wergild according to the quality of the person did not concern them, yet it was not because they were poor. They were not subject to military service because they were Romans. But in unclear cases, the Lombards had to be differentiated somehow from the Romans. In Rothari's times, this was not difficult. In the times of Liutprand, however, the Lombards no longer differed from the Romans in terms of language and religion, and the process of acculturation was very advanced. There was still a question of different of ethnic laws, yet no one bore marks on their foreheads allowing identification. The most tangible criterion distinguishing the Lombards from the Romans was the mandatory military

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plain pronoun *quis* ("someone"), Liutprand added an ethnic qualifier to the pronoun: *quis Longobardus*. Two decades later, in the *Notice concerning royal administrators*, Liutprand referred to his amendment of 713. Describing the people whom it concerned, he replaced the ethic term "Lombards" with the phrase *liveri eremanni* ("free warriors") – LL, Li, *Notitia de actoriabus regis*, chapter 5, p. 230).

289 Bertolini, "Ordinamenti militari," pp. 458 ff.

service. The local officer responsible for the general levy (*sculdahis*) and his superior, the head of the *civitas* (*dux*), or the royal *gastald*, undoubtedly had to know who was subject to mobilization. It was sufficient to make use of this knowledge in order to determine if the killed *minimus homo* was a Lombard whose wergild was at least 150 solidi, or a Roman, and thus, a person whom the edict did not concern. The formulation *minima persona qui exercitalis homo esse invenitur* pointed to a criterion on the basis of which one's ethnic and legal identity was defined in unclear cases.

In chapter 62, only two wergild amounts were specified: minimum and maximum. This was enough to specify the range of modification introduced within the old custom at the king's discretion. The minimum rate had to be written down because it was raised from 150 to 200 solidi for the royal *gasinds*. The maximum rate, on the other hand, was noted because it was the maximum for everyone without exception. This meant that when the king determined the wergild for his *gasind's* death, he could not make it higher than 300 solidi. The formulation that when the wergild was higher than the minimum it was necessary to, in each case, determine the manner by which "this amount may increase to 300 solidi according to the quality of the person," allows us to guess that there was yet another, medium wergild between the minimum and maximum rates. What corroborates this guess is the terminology used that assumes a gradation. The terms "least of men" (*minimi*) and "first class" (*qui primi sunt*) suggest there was a middle rung.

This suggestion is corroborated by Liutprand's edict by two years later which was addressed to officers responsible for the mobilization of the general levy (chapter 83). When the army had to be gathered (*quando in exercito ambolare necessitas fuerit*), the king exhorted that each *iudex* (a *dux* or a *gastald*) was allowed to exempt from the campaign

> no more than six men – each of whom has only one horse – and so take six horses for draught. Of the least of men who have neither houses nor land (*de minimis hominibus, qui nec casas nec terras suas habent*), each *iudex* shall leave no more than ten men, and these men shall each perform three days of service weekly for that *iudex* until he returns from the campaign.

Local officers of a lower rank also had, though to a lesser extent, such a possibility. A *sculdahis* was allowed to exempt from the campaign three warriors who only had one horse each and use their horses for draught, and five *minimi homines* to perform three days of services per week for him.

> The forester (*saltarius*) shall leave one man and one horse, and of least of men to work for him, he shall leave one, and that one shall work for him as is read above. And if the *iudex* or the *schuldahis* or the forester who is supposed to go out with the army presumes

to leave more men without permission or order of the king, he shall pay his wergild as composition to the royal fisc.

The image of the social stratification of the Lombard warriors is distinct, though incomplete. The first group, much better off than the *minimi homines*, consisted of horsemen. They were not wealthy people; they had only one horse, but it is unthinkable that they should fight on foot. When the commander – *dux*, *gastald*, or *sculdahis* – takes the horse from such a horseman, he would be unable to fight in a manner appropriate to his position in the army and society; he therefore stays at home. No one expects, however, that he will work on the estate of his superiors during the campaign. We already know the next, lower category from chapter 62: they are *minimi homines exercitales*. They belong to the group that is obliged to go to war (*homines* […] *qui in exercito ambolare devit*), but they are paupers – they have no land of their own and they most probably live on someone else's property as tenants. They are exempted from the campaign not because horses were taken from them, but in order to be used as laborers on the commanders' estates until the war is over. Mobilizing such tenants like them left the estates of the Lombard elite with a shortage of labor. *Minimi homines* apparently did not have any horses on which they could fight. They went to war and fought on foot.

Chapter 83 does not mention the wealthiest and best armed people who had more than one horse but from whom no one would dare take their horses as beasts of burden. In chapter 62 they are called "greatest" or, more precisely, "the first class" (*qui primi sunt*) and are protected with a wergild of 300 solidi. The reason why they were omitted in chapter 83 is obvious: no one had the right to exempt people like them from war. In Aistulf's laws of 750 (chapter 7), it was stated that officers who dare exempt the wealthy from military service by letting them go home (*hominess potentes dimittunt ad casa seu de exercitu*) shall pay the penalty stipulated in Liutprand's edict, that is, their own wergild.

The orders, bans, and penalties that multiply in the edicts of the 8th century testify to a gradual erosion of the traditional values of the warrior people. In Liutprand's times, pauperization led some warriors to avoid military service, while their commanders, instead of keeping them under their command, preferred instead to keep them on their fields as ploughmen or harvest workers. The king saw in this not only a weakening of the numerical strength of his army, but also, and above all, an undermining of the traditional foundations of state order. He thus defended the principle of his political system: *minimi homines* had to fight because they were free Lombards.

Social changes and the Roman influence undermined, nevertheless, the tribal tradition and the power of the influence of its models. In his edict of 726, Liutprand

resorted to royal orders and bans where previously tradition had sufficed. It was necessary to curb abuse in matters of mobilization of the army, although at this stage Liutprand did not yet fear that the *arimanni* would neglect to have and bear arms, that is, to demonstrate their social position. In chapter 4 of an edict of 745, King Ratchis decided that in this matter it was necessary to support the norm of traditional culture with an administrative writ and penalties. He commanded that the *arimanni* summoned to accompany the *gastald* or the *dux* on horseback on their way across the country should have a shield and a spear. He who turned up without the required equipment had to pay his superior a penalty of 20 solidi, while the *iudex* himself had to pay his own wergild to the king if he did not exact this obligation. In the times of Aistulf, disregard for the military tradition had become more and more widespread, reaching the ranks of even the "first class" warriors. This prompted the king to issue even more detailed orders.

In chapter 2 of Aistulf's edict of 750, "The man who holds seven manses (*qui habet septem casas massarias*) should have a coat of mail and the other military equipment, in addition to horses. If he has more than this number, he should also have an appropriately larger number of horses and the remaining armament. Those men who do not hold manses but who hold forty *iugera* of land should have horse, shield, and lance. With regard to lesser men (*de minoribus hominibus*), it is pleasing to us that if they can afford it, they should have a shield as well as a quiver and bow and arrows." Chapter 3 imposed similar requirements on people living off trade and possibly also craftsmanship: "Let it be observed likewise with regard to those men who are merchants and have no *pecunia* [land possessions] (*negotiantes sunt et pecunias non habent*): those who are the greater and more powerful (*maiores et potentes*) should have a coat of mail and horses, shield and lance. Those who come next (*qui sunt sequentes*) should have horses, shield, and lance. And those who are the lesser men (*qui sunt minores*) should have the quiver and bow and arrows."

Italian historians see a revolutionary change in the principles on which mandatory military service was based in this edict. Prior to the edict, all free Lombards would go to war and no one else besides them. What Aistulf did here, they argued, was to introduce economic rather than ethnic legal criteria. From then on, military service would be imposed on everyone who had appropriate means irrespective of whether they were Lombards or Romans.[290]

290 Bognetti, *L'età longobarda*, vol. I, pp. 100, 106 and 137; Bertolini, "Ordinamenti militari," p. 501; Tabacco has a similar view, though he does have some reservations, *Egemonie*, p. 150f. and Gasparri, *Prima delle nazioni*, p. 153.

I do not share this view. Chapter 2 of Aistulf's laws has a heading which clearly specifies the subject matter of the regulation: "Concerning those men who can afford armor but have none as well as those lesser men who can afford a horse, shield and lance, but do not have them, and about those men who cannot have [such equipment] and do not have the means to buy them but they should have [at least] a shield and quiver." As can be seen, the chapter is only about the requirements imposed on warriors depending on the degree of their wealth or poverty and concerning the standards of their military equipment. Chapters 2 and 3 of the edict of 750 do not say a single word about who is and who is not subject to mandatory military service. Aistulf's edict did not concern this issue, and there is no reason to suppose that any significant change took place in this respect.

Aistulf indeed introduced a correlation between one's wealth and one's standard of military equipment. At the same time, there is no doubt that he demanded the possession of any sort of weaponry only from those on whom it was incumbent to render military service. What is telling is that chapter 2, in which military equipment is linked precisely with the size of the land held, does not specify the minimum wealth, or rather, the level of poverty beyond which one was no longer required to go to war and to have some form of arms. The third and the lowest category of warriors were the *minores* who were equipped to fight as infantry archers. They did not even have so much as 40 *iugera* of land, and since the edict does not mention any minimum of immovable property, we can assume that they were largely free tenants of peasant type. Liutprand spoke of them clearly as *minimi homines* who did not have their own land or house but had to go to war. Nothing changed in this respect. In the times of Aistulf, as in the times of Liutprand, mandatory military service was not based on property criteria. The people the edict describes as *minores* were required to have an arch and to participate in war not because they were wealthy (or not), but because they were free Lombards. Aistulf did not change this traditional principle.

The division of the warriors into three categories and the type of equipment each was expected to have does not seem a revolutionary novelty introduced only in 750. The *minores* who did not have even 40 *iugera* of land and went to war as infantry archers correspond exactly to the category defined in chapters 62 and 83 of Liutprand's edicts as *minimi homines exercitales*. The requirement laid down by Aistulf that warriors of moderate means should have a horse, a shield, and a spear corresponds closely to the standard of equipment that King Ratchis required of the *arimanni* summoned to accompany the *dux* or *gastald* on horseback. In Liutprand's times, horsemen who had only one horse and who were exempted from participation in the campaign if the commander took that horse for

draught belonged to the same category. Aistulf did not create a new reality, but only defined with his edict the strict correlation between the amount of land one held and the required standard of military equipment. This was a disciplinary measure implemented in the face of relaxed enforcement. Long before 750, the poorest Lombards had gone to war on foot, equipped with arches and arrows. Small-holders went on horses with shields and spears, while the richer had at least two horses and the equipment of an armored horseman. A warrior's equipment had been since time immemorial a matter of prestige, a visible sign of one's social standing. When the influence of this model of traditional culture on social behavior waned, King Aistulf decided to bolster the old custom with an administrative order. Yet neither Aistulf, when he was regulating the standard of military equipment, nor Liutprand, when he opposed excessive exemptions of the poorer warriors from participation in war, intended to reform the organization of the military forces and state structures. On the contrary, they attempted to prevent the traditional order from collapsing and to enforce obedience to the old rules.[291]

While it was easy to define the threshold of wealth for those reaping profits from the land, Aistulf had to devote a separate chapter to town merchants and artisans. The reason was obvious and was explained in a simplified way at the beginning of chapter 3: those people do not have any estates (*pecunias non habent*). As a matter of fact, *negotiantes* often had land in the country, but their major source of profit was trade, so the size of the land held was not a reliable indicator of their wealth. It is telling that in the face of the lack of tangible, reliable criteria of wealth, the king made do with the names of three social categories: "the greater and more powerful" (*maiores et potentes*), "those who come next" (*sequentes*) and "the lesser men" (*minores*). That sufficed. Knowledge of who belonged to which category must have been habitual in the local community and available to the king's officers if the precise requirements concerning military equipment were based on it. The three-level division of the free Lombards into *maiores*, *sequentes*, and *minores* was not introduced by Aistulf's edict but was based on an old custom on which the king drew whenever he lacked any other criteria. It can be seen that in chapters 2 and 3 of the edict of 750, the same social gradation was used in the town and in the country. The requirements concerning military equipment were also analogous, the difference being that in the case of land holders these requirements could be tailored to the size of property. When it came to merchants, traditional knowledge about the social position of each of them had to be resorted to.

291 Modzelewski, "La stirpe," p. 434f.

This traditional knowledge had to have had a practical application, otherwise it would not have been habitual and available to the king's officers. There had to be an important reason why people knew who was a *maior*, who was a *sequens*, and who was a *minor.* In chapter 62 of Liutprand's edicts, there are two segments of this triad: the lowest (*minima persona exercitalis*) and highest (*qui primus est*). What made them different was their wergild. In the local community of free Lombards, where people knew everything about one another, it was pretty easy to estimate the "personal quality" of each person. The division into the "the greater and more powerful," "those who come next," and "the lesser men" was based on this knowledge which was linked with the estimation of the wergild *secundum qualitatem personae*. On what traditional criteria, then, was this estimation based, an estimation that was once so obvious that Rothari did not think it necessary to go into details?

It is certain that it was not based on wealth thresholds, which were introduced by Aistulf solely to prevent dereliction in matters of military equipment. The three-level social gradation of free Lombards had already existed for many generations before Aistulf. It was an element of the traditional order of things, just as were the differences in military equipment according to one's social standing. Neither Rothari, nor even Liutprand had to command the *arimanni* to get properly armed. The kingdom of the Lombards was organized as a political commonwealth of warriors. A free Lombard's position in society was closely linked with the position he held in the tribe's army. The most significant and tangible indicator of the "quality of the person" was in this society the standard of the military equipment one had. The social gradation reflected in the three-level scale of wergilds was probably linked with a conviction that a warrior's military value was a measure of the quality of his person.

Perhaps we are dealing here with a hierarchy of values shaped in times of military migrations. The Lombards built their state in Italy as conquerors who had neither seized the major capitals of the country, nor ensured the cooperation of the local elites, nor assumed the structures of Roman statehood. These circumstances exerted a profound and lasting influence on the shape of the political system and the ideological foundations of the Lombard monarchy. The durability of the conceptual categories and legal norms that identified the people with the army, and a free man with a warrior left a definite mark in the sources. The edicts of the Lombard kings bring to fore the military aspect of the social gradation of the free Lombards. Neither in the Pact of the Alemanni nor in the laws of the Burgundians do we find this kind of trope. The similarity of notions and terms (the three-level scale of social positions estimated according to the "quality of the person") and the similarity of the Burgundian and Lombard wergild rates

(150, 200 and 300 solidi) seem to suggest, however, a similarity of their historical genealogy. Perhaps, then, a military dimension of social gradation played a significant role in the tribal past of the Burgundians and Alemanni as well.

Although the position of an individual in the tribal army depended not only on his arms, but also on his family connections and personal valor, the standard of his military equipment depended primarily on his material resources, that is, on his wealth. "The quality of the person" depended on all three factors and could not be automatically determined by one's birth. The boundaries between the "greater and more powerful," "those who come next," and "the lesser men," could be transcended. In the chapter that deals with unintentionally causing miscarriage, Rothari ordered that the woman be evaluated "according to her nobility" or "according to her birth" (*adpretietur, ut libera, secundum nobilitatem suam*; *secundum generositatem*). What lay behind these equivalent terms was a procedure of evaluation according to the quality of the person, but the context in which the terms *nobilitas* and *generositas* appear is telling. Nobility and breeding are used here as attributes of the free condition and are subject to gradation. All free Lombards – women and men – were more or less of noble birth. Paul the Deacon even treated nobility as an antithesis of poverty. With material downfall – he noted in relation to his brother's fate – "nobility fades, and poverty sets in" (*nobilitas periit miseris, accessit aegestas*).[292] This is admittedly a literary text, but Paul the Deacon knew the law and knew also that impoverishment entails loss of one's previous personal quality and descent to a lower rung. Advancement was probably also possible. The system of gradation did not hamper social mobility with barriers resulting from one's standing in this system. What follows from the cited words from Rothari's edict is that in this system there was no division of the free into an aristocracy and the commons. The category of free common men does not find any conceptual equivalent in the laws of the Lombards.

In the laws of the Saxons, Frisians, and Thuringians, there is a dichotomous division of the free tribespeople into an aristocracy and commons. The decision to write these laws down was taken at the assembly in Aachen in 802, but they have more in common than the time and the circumstances of their codification. The Saxons, Frisians, and Thuringians did not settle on the territories of the Roman Empire, but remained within the realm of Germania. They had held on to the tribal system up to the 8th century, while Rome and its Frankish heirs

292 LL, Ro, chapter 75, p. 28; the cited line from Paul the Deacon comes from his poem dedicated to Charles the Great, PDHL, ed. G. Waitz (MGH SS rer. Lang.), Hannover, 1878, p. 6.

remained for them the outside world. The peoples of that "Germanic Germania" did, of course, maintain contacts with that civilized world. It was not, however, a coexistence within the realms of the same political and social organism. In the 8th century, when the Frankish conquerors brought a new religion and a new order at spearpoint to the Saxons and Frisians, they found on these conquered territories barbarian tribes organized slightly differently than the barbarian communities that in the period of migration had entered the territories of the Western Empire as conquerors or allies.

The black-and-white division of free Saxons into a tribal aristocracy and commons differed significantly from the social gradation of the free Lombards. There is no reason to doubt that the Saxon edelings were wealthier, that they were better armed, and held a position higher than that of the frilings within the army. But what determined whether one was an edeling or a friling was not wealth or military equipment, but birth. This was clearly stated already in Charles the Great's *Capitulary* of 785:

> It was also decided to include among these decrees a ruling that every infant be baptized within a year; and we ordain that if, without the counsel and authorization of a *sacerdos*, anyone scorns to offer an infant for baptism within the span of a year he is to pay 120 *solidi* to the fisc if of noble stock (*si de nobili genere fuerit*), sixty if a freeman (*si ingenuus*), thirty if a *litus*.[293]

Membership in either the tribal aristocracy or in the group of the commons was determined by birth and thus hereditary, and moving from one group to the other was essentially out of the question. For this reason, German literature on this subject unanimously treats the Saxon edelings, frilings, and *laeti* as legal states of being. This was the case not only in Saxony under Carolingian rule, but also of the Saxon tribes before the Frankish conquest.

The difference of social status between the edelings and the frilings was not only more durable than the Lombard differences in personal quality, but it was also more profound. Among the Lombards, the gradation of social positions was reflected in the three-level gradation of wergilds (150, 200, and 300 solidi), but compositions for wounds, beatings and insults were the same for all free tribesmen. Among the Frisians, Thuringians, and Saxons, the differences in compositions corresponded to the differences in wergild.

According to title 1 of the Frisian law, the wergild of a freeman (*liber*) was two-thirds of a noble man's wergild: 53 solidi plus 1 denarius and 80 solidi, respectively. In title XXII (paragraphs 1–89), *Lex Frisionum* lists all sorts of bodily harm and

293 CPS, chapter 19, p. 40.

insult, assigning each instance an appropriate composition. The list ends with the following formula: "All this concerns a free man (*ad liberum hominem pertinent*). However, the fines for [wounds inflicted upon] a noble man, be it for wounds and for hits and for all that has been described above, will be established at a third part […] more." This was the 2:3 proportion, the same that was used in wergilds. Not only his head, but also the little finger of an edeling were by half more precious than a friling's head and little finger.

In western Frisia (between the Vlie and Sinkfal rivers), as well as in eastern Frisia (between the Lauwers and Weser rivers), a noble man's wergild was twice as high as a free man's wergild. Among the Thuringians, the range was threefold, both in the case of wergilds and compositions. "He who kills an adaling," *Lex Thuringorum* proclaimed, "shall pay 600 solidi. He who kills a freeman, shall pay 200 solidi […]. He who hits an adaling, shall pay 30 solidi […]. And he who strikes a freeman, shall pay 10 solidi […]. An adaling's broken bone is worth 90 solidi […]. A freeman's bone is worth 30 solidi." For every instance involving some kind of harm, *Lex Thuringorum* stipulated two composition rates differentiated in a proportion of 3:1 depending on whether the harmed was an *adalingus* or a common *liber*.[294]

What deserves attention here is an exceptional situation in which the same difference in rates admittedly appears, but the editor of the law code spared himself the trouble of repeating the numbers and the term *adalingus*. This exceptional case involved the crime of kidnapping a free man and selling him into slavery: "XXXVII. He who sells a free man on the territory of the fatherland (*qui hominem liberum infra patriam vendiderit*), shall pay for him as if he killed him, and moreover as a *fredus* 12 solidi [to the fisc]. XXXVIII. He who sells a free man abroad (*qui liberum extra solum vendiderit*), shall pay for him likewise, and moreover 60 solidi as a *fredus*." The composition equaled the wergild. It was not necessary, therefore, to repeat the rates already given in titles I and II and to reiterate that an edeling's composition was three times bigger than that of a freeman. It was enough to write "shall pay for him as if he killed him." This applied to both the noble and common people. The term with which they were collectively described is significant here: *liberi*, i.e., free men. In titles XXXVII and XXXVIII it has a wider conceptual range than in other norms of the law of the Thuringians because it functions as an overriding category encompassing both the edelings and frilings.

294 LThur, I–XXV.

We encounter a similar situation and a similar terminology in title LVI: "If a slave abducts a free woman, the [slave's] master shall pay the fine as if she was killed." Also in this case, the wergild was the fine. Consequently, it was not necessary to specify the rates since both a woman from a family of adalings and from the common people could be described with the same term: *libera femina*. The codifier used, without second thought, the overriding notion of the free whenever the adalings and the frilings were referred to collectively. Apparently he took it for granted that the aristocracy and the commons were subgroups into which the huge community of free tribesmen and women was divided.

The law of the Saxons does not mention any wergild or compositions for the common free people. The list of compositions given in titles I–XIII of that codification for offenses, such as hitting an edeling or cutting his little toe, concerns only those of noble birth. Title XIV names their wergild: "He who kills a noble man, shall pay 1,400 solidi." Immediately following this we read that virgins (also obviously of noble birth) are protected with twofold compositions and doubled wergilds. *Lex Saxonum* then moves on – without mentioning the frilings – to the *laeti*: "A murder of a *laetus* should be fined with 120 solidi and the compositions for his wounds are in each case twelvefold lower than those for a noble man. They [the compositions – K. M.] are paid with large solidi."[295]

The mention of "large solidi" comes to be explained in title 66, the last title of the Saxon law. According to this explanation, "there are two kinds of solidi: one is 2 triens, that is, a twelve-month ox or a ewe with a lamb. The other solidus is 3 triens, that is, a sixteen-month ox. The small solidus is used to pay the wergilds; the large to pay other kinds of composition" (*maiori solido aliae conpositiones, minori homicidia conponuntur*). When converted into full Frankish solidi, a Saxon edeling's wergild was 960 solidi and a Saxon *laetus's* wergild was 80 solidi. This is how the value of redemption was measured. It was paid, as can be seen, in kind.

The absence of information about the wergild and compositions of the common free men is explained by the unique character of the Saxon codification of Charles the Great. For political reasons we will soon come to discuss, *Lex Saxonum* was a kind of privilege or a statute given to the Saxon tribal aristocracy by the king of the Franks.[296] The range of this codification, or at any rate its first twenty

295 LSax, title XVI, p. 22. *Litus occisus CXX solidis conponatur; multa vero vulnerum eius per omnia duodecima parte minor quam nobilis hominis; solvatur autem solido maiori.*

296 On this, see Brunner, *Nobiles und Gemeinfreie*, p. 101. The idea that the law of the Saxons was a special statute of the tribal aristocracy enjoys a widespread approval. It was convincingly justified by Lintzel, "Die Entstehung der Lex Saxonum," in: Lintzel, *Ausgewählte Schritten*, pp. 407–413.

titles, encompassed the interests of that group, which included the edelings themselves and the people under their manorial authority. This is why directly after describing the edeling's wergild and compositions, the law of the Saxons deals with the *laetus's* wergild and compositions and with the punishment for killing another man's slave, while it is silent about the friling's wergild and compositions. The *liberi* appear in the law of the Saxons merely three times. Title XVII mentions that an edeling can clear himself of the charge of murdering another man's slave by an oath sworn with three oath helpers (III *iurantibus negetur*), while a friling in a similar situation had to swear an oath in a complete group of most probably twelve oathhelpers (*a libero* […] *pleno sacramento negetur*). In title XXXVI, the common free men are mentioned because in the case of a petty theft they paid to the fisc a lower *fredus* than the edelings but a higher one than the *laeti*. Finally, title LXIV speaks not of a free man in general, but of the manumitted who remained under some edeling's *mund* (*liber homo qui sub tutela nobilis cuiuslibet erat*); he had to respect not only his blood relatives' but also his patron's – the edeling's – right of pre-emption when he wanted to sell his patrimony. Each of these three mentions is an exception to the rule motivated by special reasons, the rule being that *Lex Saxonum* does not concern the common free men but only the aristocracy. As a result of this limitation, a perfunctory reading of the law of the Saxons might give the impression that the common freemen were an insignificant group in the Saxony of those times. Information offered by other sources is sufficient to put us straight on this matter, but those other sources, including the capitularies of 785 and 797, both older than *Lex Saxonum*, do not mention wergild rates.

Trying to fill in this gap, Heinrich Brunner referred to the law of the Ripuarian Franks.[297] In title XXXVI *Lex Ribuaria* defines the wergild rates for foreigners. It says that "If a Ripuarian Frank kills an Alaman, a Frisian, a Bavarian, or a Saxon, he shall be liable to pay twofold 80 solidi." Indeed, such was the amount of wergild (160 solidi) of a freeman in the law of the Bavarians and of a freeman of a lower category (*minoflidus*) in the Pact of the Alemanni. It is true that *Lex Frisionum* gives an amount by two-thirds lower in the case of a freeman (*liber*), but this is because of the difference in the monetary systems, and not the real difference in the value of wergild.[298] The information that the wergild of a Saxon newcomer to the land of the Ripuarian Franks was at the end of the 7th century 160 solidi thus seems credible and provides us with a clue to the wergild of a friling in Saxony. *Lex Ribuaria* obviously gives that amount in the monetary system of the Frankish

297 Brunner, *Nobiles und Gemeinfreien*, p. 99 (285).
298 Eckhard, LFris, *Einleitung*, note 26, p. 15f.

state, where the solidi consisted of three triens. The law of the Saxons, as was written in title LXVI, measures the value of wergilds in solidi smaller by one-third. After conversion, the Saxon's wergild mentioned in the Ripuarian law was worth 240 small solidi, that is, exactly twice as much as the wergild of a Saxon *laetus* and six times less than the wergild of a Saxon edeling. Heinrich Brunner's conclusion that the Ripuarian law deals with the wergild of a Saxon friling thus seems very likely. What also confirms this is the fact that in the Salic, Ripuarian, and Chamavian laws, as well as in western and eastern Frisia, the relation of the *laetus's* and a common freeman's wergild was 1:2.[299]

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299 The Ripuarian and Salic laws have already been discussed; see LFCH, titles IV and V and LFris, I, 10, p. 36 and XV, 1–3, p. 60. Lintzel ("Zur altsächsische Rechtsgeschichte," in: Lintzel, *Ausgewälte Schritten*, pp. 420–426) estimated the wergild of a Saxon *laetus* not at 120 solidi, as was clearly stated in title XVI of the law of the Saxons, but at 180 small solidi, that is, three-fourths of a friling's wergild and one-eighth of an edeling's wergild. This idea was based on a mistaken interpretation of a formulation from title XVI, according to which compositions for *laeti*, always twelvefold smaller than the compositions for edelings, are paid in large solidi (*multa vero vulnerum eius per omnia duodecima parte minor, quam nobilis hominis, solvatur autem solido maiori*). Lintzel related these words not only to compositions, but also to the *laeti's* wergild mentioned in the same sentence, although title LXVI states explicitly that the fines for murder (with no exception) were paid in small solidi and all other fines were paid in large solidi (*maiori solido aliae conpositiones, minori homicida conponuntur*). As a result of this mistake, Lintzel converted the *laeti's* wergild from the allegedly large into small solidi. However, he did not convert the edeling's wergild, because in this case he took into account title LXVI and concluded that the source gave the amount of wergild in small solidi. This is how the 1:12 proportion found in the source got remade into a 1:8 proportion. What is worse, Lintzel also attempted to find the 1:8 proportion in title XVIII, where after a *laetus's* killer was freed by his master, the relatives' feud could only be directed against the killer himself and "seven of his relatives," that is, members of his family up to the seventh degree of kinship (see chapter III above). The source mentions the murder of any person, "for instance (*ut puta*) a noble." Lintzel decided, however, that it could not be anyone except an edeling, and he translated the words concerning the killer and seven of his relatives into numbers (1+7=8) and saw it as proving that eight *laeti* could be killed for one nobleman, because such was ostensibly the proportion of their wergilds. The *per analogiam* argument taken from the eleventh-century Anglo-Saxon norm and concerning collective oath does not look any better. According to this source, a nobleman's oath is equivalent to the oath of six ceorls because such was the proportion of their wergelds (*Twelfhyndes mannes adforstent VI keorla adfordam, gif man thone wrecan sceolde, he bidfulwrecen on six ceorlan, 7 his wergild bid six ceorla wergild* – Liebermann, GA, vol. I, p. 464 n.). This has nothing to do with the number of people that the legitimate avengers could kill. It would

After providing the missing link, the scale of the wergilds of the Saxon *laeti*, frilings, and edelings would look like this: 1:2:12. In comparison to the law of the Frisians (1:2:4 in eastern and western Frisia, and 1:2:3 in middle Frisia), the Chamavians (1:2:6) and the Thuringians (a threefold difference between the edelings and the common free men), the exceptionally broad (as much as sixfold) span of the wergilds between the Saxon aristocracy and the free common people is puzzling. This has been explained in two ways. P. Winogradow and R. Schröder have argued that Charles the Great tripled the edelings' wergild in the law of the Saxons in order to win over the ruling class of Saxon society. Philipp Heck, who was followed by other advocates of the theory of the *Königsfreie*, interpreted it as a sign of the low social condition of the frilings. In his view, the Saxon *liberi* remained under the personal and land authority of the edelings.[300]

Yet neither the monetary equivalent of the wergild of a Saxon friling (160 large solidi), nor its relation to the wergild of a *laetus* (2:1) supports the thesis that his position was lower than that of the free Franks, Frisians, Alemanni, or Bavarians. What is at stake in the law of the Saxons is the elevation of the tribal aristocracy rather than the degradation of the tribal commons. There is no doubt, either, that in conquered Saxony Charles the Great tried to strengthen the position of the edelings and encouraged them to cooperate with the Franks.

The so-called *Capitulatio de partibus Saxoniae* of 785 resembled a set of laws enabling the victor to impose his will and brutally exact obedience. Nothing is said in it about ordinary murders, feud, and wergild. What is mentioned, though, are murders of a special kind, as well as the death penalty. The conquerors dealt it out profusely as a means to repress pagan practices and as punishment for resisting the Church and Christianization. It was also meted out for those kinds of murders that were treated as a threat to the rule of the Franks and to their forcible rebuilding of the political system. Thus, the death penalty was imposed for murdering a Christian clergyman (chapter 5), for plotting against Christians (chapter 10), for disloyalty to the king (chapter 11), but also for acts of aggression against one's masters. Chapters 12 and 13 state that: "If anyone rapes the daughter

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not be worthwhile to dwell on an obvious mistake made by a great historian, had it not been for the wide acceptance it gained. Lintzel's interpretation owed its popularity, not so much to the power of its arguments, as to the charm of its conclusion, since it allowed to minimize the difference between the *laeti* and the frilings according to the *Königsfreie* theory that Lintzel did not espouse anyway.

300 Vinogradoff, *Wergeld und Stand*, pp. 183 ff.; Schröder, *Der altsächsische Volksadel*, p. 360; Heck, *Altfriesische Gerichtsverfassung*, *Die Gemeinfreien* and *Die Standesgliederung*.

of his lord, he is to be put to death. If anyone kills his lord or lady, he is to be punished in like fashion."

What they are speaking about is the family of the master; and so this repression is for going against private authority, not against the authority of the state. It is not about the private authority of the immigrant Franks – this would be written explicitly – but primarily, if not solely, about the wealthy Saxons. The conquerors provided them with a special kind of protection from assaults committed by people subject to the master's authority. Who were those people? Despite appearances, they were not the slaves. Neither the Frankish state, the king, nor any special legal norm established in the Capitulary had to be consulted for one to execute a revolting slave. This norm concerned people who had legal subjectivity, probably *laeti* or declassed frilings settled on someone else's land. Charles the Great apparently concluded that it was not enough to leave the peasants' crimes against their lords to the customary course of the feud, revenge, and wergild. In the eyes of the Franks, who imposed a new religion and order on the conquered Saxons, murdering one's master or mistress was such a serious crime that the most draconian measure of state repression had to be used against the murderer. This same measure was also used for killing a bishop or plotting against the king. The conquerors tried to strengthen the seigniorial structures among the conquered and took the side of the wealthy against the ordinary.

The accounts provided by the Carolingian annals about the vicissitudes of the wars with the Saxons allow us to look closely at the organization of the political and military power of the Saxon tribes. It was noted in *Annales regni Francorum* that during the campaign of 775, "all the Saxon Ostphalians [*omnes austerleudi Saxones*, that is, the Ostphalians] came there with Hessi, gave hostages as he was pleased to demand and swore oaths of fidelity to the above-said lord King Charles." When Charles the Great and his army were on their way back "all the Angrarians came with Bruno and their other optimates (*cum Brunone et reliquis obtimatibus eorum*) to the district called Bucki [Bückegau] and there gave hostages, like the easterners [*Austrasii*]."[301] "All the Ostphalians," "all the Angrivarians," or "all the Westphalians" was not used here solely for rhetorical effect. We are dealing here with organized political bodies represented by the particular Saxon tribes. At the head of each was a chieftain, who led his people both on the battlefield and in forging treaties with the Franks: Hessio among the Ostphalians, Bruno among the Angrivarians, and Widukind among the Westphalians. Neither in times of war nor when negotiating peace did the chieftain act on his

301 ARF, pp. 40–42.

own, however. They acted as a group of leaders. Bruno came to Charles the Great with the rest of his "[Angrivarian] optimates," and thus counted himself among those optimates. It was together with them that he decided to give hostages and to pledge loyalty to the king of the Franks. There is very likely no doubt that the tribe's elders, called "optimates" by the Carolingian chronicler, consisted of edelings. They played a crucial role in times of war and in times of peace.

The metaphor of a carrot and stick seems too idyllic in relation to Charles the Great's politics towards that group. I do not agree with Martin Lintzel, who argues that in the Saxon-Frankish struggles, the edelings took the side of the conquerors, while military resistance and acts of aggression were the work of solely the common people. This is in my view an anachronistic projection of the information about the social face of the Stellinga uprising of 841–842 onto the realities of tribal times.[302] Widukind came from the highest Westphalian aristocracy. His son-in-law, Abbion, was also an edeling. So were, most probably the other chieftains, unknown by name, who waged wars with the Franks. The Saxony of the 8th century was not a kingdom but a confederation of tribes. Large-scale military campaigns were possible only within the traditional military and political structures under the command of recognized elders, who for centuries had stood at the forefront of the communities of the Westphalians, Ostphalians, Angrivarii, and Nordalbings. In order to secure a lasting victory and pacify the conquered country, Charles the Great had to physically destroy those from amongst the elders who were most unyielding and win over the other edelings for the purposes of collaboration.

In 782, during the mass executions in Verden (the annals suggest that on Charles the Great's order, as many as 4,500 captured Saxons were beheaded at the time), Widukind escaped with his life.[303] There is no reason to suppose that there were no edelings amongst those who did not manage to escape. More than one noble head must have rolled. The edelings did not escape later deportations either.[304] But Widukind's lot is typical of the politics of the conquerors. In 785, when the leader of the tribal irredentism gave up the fight, Charles the Great gave him and his son-in-law, Abbion, a guarantee of immunity, received them with honors at his court, and baptized them there, which in *Annales regni Francorum* was considered an

302 Lintzel, "Karl der Grosse und die Sachsen;" for a different view, see Goldberg, "Popular Revolt," note 47, p. 476f.

303 ARF, p. 64: the Saxons surrendered again: *et reddiderunt omnes malefactores illos, qui ipsud rebellium maxime terminaverunt, ad accidendum IIIID; quod ita factum est, excepto Widochindo, qui fuga lapsus est partibus Nordmanniae*; see *Annales Einhardi*, p. 65, year 782.

304 See MGH, *Epistolae*, vol. 5, p. 30, letter from 815.

act of surrender on the part of the entirety of Saxony to the rule of the king of the Franks. *Annals Mosellani* and *Annales Laureshamenses* assure us that Charles the Great personally lifted Widukind from the baptismal font and honored him with splendid gifts.[305] On the part of the Frankish court, this was a demonstration of enormous political weight; in this way the conquerors showed the Saxon edelings that everyone who recognizes the authority of King Charles and agrees to collaborate can count on forgiveness and great benefits.

People willing to collaborate had already appeared earlier. In 782, Charles the Great decided to introduce *comes* administration in Saxony. This was an ambitious intention, in some ways also premature, but the *comes* offices were instated. *Chronicon Moissacense* and *Annales Mosellani* inform us that the king conferred this honor on Saxons from the noblest families.[306] There was no other choice. To build new structures without the edelings' participation would have been like building castles in the air.

Charles the Great's social elevation of the edelings was not purely a political tactic; there were also structural reasons for this. In the eyes of the Franks of those times, landholders represented a natural foundation of the social order. This is why in the *Capitulary* of 785, the protection of land holders (*domini*) found itself in a prominent place alongside the protection of the Church, Christianity, and royal power. In Saxony, there were probably no big estates on the Gallic scale, but the edelings were distinguished – which is obvious – by the size of their land and made use of the labor of slaves, *laeti*, and poor frilings. The Saxons edelings were the lords that the Frankish *Capitulatio* defended against all possible attacks from the peasants.

With all this in mind, it is easier to understand the reasons why *Lex Saxonum* was meant to be the law of the Saxon aristocracy. It is perhaps on this occasion that the wergild of the edelings was raised, but the sources do not allow us to go beyond mere conjecture. We can definitely state, however, that only punishments for murdering an edeling or his dependants were noted in the law of the Saxons. Apart from the nobleman's wergild, we also have here the *laetus's* wergild, a significant part of which belonged to his master, and a fine for the murder of another man's slave. *Lex Saxonum* does not, however, mention the friling's wergild at all. This is a tacit, yet reliable testimony to the complete legal independence of a Saxon friling. If he was killed – feud, reconciliation, and wergild were the

305 ARF, p. 70; *Annales Mosellani*, MGH ss, title XVI, p. 497 and *Annales Laureshamenses*, MGH ss vol. II, p. 32.

306 Chr. Moiss., MGH ss, vol. I, p. 497; see also *Annales Laureshamenses*, MGH ss vol. II, p. 32.

matter of his clan and no one else. No edeling received even a single solid of a friling's wergild.

The same can be said about personal inviolability and the protection of honor. *Lex Saxonum* lists meticulously the edeling's compositions and mentions that the compositions for a *laetus* are twelvefold lower, but is silent about the frilings. Only *per analogiam* can we presume that the frilings' compositions, like their wergild, were six times lower than the compositions to which the nobles were entitled in an analogous situation. The codifier's lack of interest in this matter indicates that it did not fall within the range of interest of the aristocracy, for whom the law of the Saxons was written. Unlike the *laeti*, who through their condition were naturally bound to the master's property, the frilings were independent in the eyes of the law.

Pauperization and household loss forced many frilings to settle on the land of others. This phenomenon, no doubt, grew more intense in the 9th century, but its scale in Saxony before the Carolingian conquest remains unknown. This is not the point, however. More important than how many frilings lost their patrimonies is the answer to the question of whether the frilings' legal standing in any way implied a state of land or personal dependence. We can find an answer to this in title LXIV of the law of the Saxons. Advocates of the theory of a general subjection of the frilings to the authority of the aristocracy have taken a particular liking to this norm. Given the disputes about its interpretation, I first cite it in the original: *Liber homo, qui sub tutela nobilis cuiuslibet erat, qui iam in exilium missus est, si hereditatem suam necessitate coactus vendere voluerit, offerat eam primo proximo suo; si ille eam emere noluerit, offerat tutori suo vel ei qui tunc a rege super ipsas res constitutus est; si nec ille voluerit, vendet eam cuicumque libuerit*.

Before I offer a translation, we need to examine the terms *tutela* and *tutor*. Literally they mean "care" and "one who cares," respectively. In the Saxon law, however, *tutela* is a legal term, a synonym of the Germanic word *mund* while *tutor* refers to the man who holds that *mund* and is thus a synonym of the Lombard term *mundoald*. In title XLII, *Lex Saxonum* regulates how the *tutela* over a widow is taken over by the deceased husband's relatives. According to title XLIV, if a man dies leaving no sons but only daughters, the *mund* over them (*tutela earum*) goes to the deceased's brother or the closest of his relatives on the spear side. Title XLIII says that a claimant to a widow's hand has to offer the "price of her purchase" (*pretium emptionis eius*) to her *tutor*. Taking this into consideration, we can translate title LXIV in the following way: "A free man who is under the *mund* of an edeling who was exiled, and who, if forced by necessity, wishes to sell his patrimony, must first offer it to his nearest relative. If he does not wish to buy it, he must offer it to his *tutor* or to him whom the king appointed

to hold authority over the property. If he does not want it either, he can sell it to whomsoever he wishes."

The title concerns, as can be seen, the right of pre-emption. The cited text indicates that the Saxons had a principle similar to the Slavic and Scandinavian laws of propinquity; when a free man was selling his patrimony (inherited estate, *odal*), then the unconditional right to consider buying the property belonged to the closest relative according to the customary order of succession.[307] Title LXIV applied this principle to a very particular situation: the free person referred to here remained under some edeling's *mund*. Moreover, that patron (*tutor*), or perhaps the *liber homo* himself – this is not entirely clear – was exiled from his home land. In the final stage of the wars with the Saxons, such deportations were not rare and also happened to edelings, but did not entail a complete deprivation of property rights. This gave rise to claims,[308] which probably motivated the codifier to add a relevant norm in title LXIV of the law of the Saxons.

As Martin Lintzel rightly observes, the formulation – "A free man who is under the *mund* of an edeling" – suggests the very particular situation of such a man rather than the legal condition of all Saxon frilings.[309] In this particular case, the *liber homo* had a patron and was subject to his *mund*. The question is to what extent it limited the property and personal laws of "the free man under patronage." Since he could sell it, he was the unquestionable owner of his patrimony. Restricting the freedom to sell it through the right of pre-emption given to the relatives, that is, to the potential heirs, was a commonly observed rule. In this case, an additional aspect was added to this general rule: after the blood relatives, next in line and – or so it seems – on the same grounds, the *tutor* could claim the right of pre-emption. It thus appears that if that "free man who is under the *mund* of an edeling" died childless and left no blood relatives entitled to inheritance, the patron was the heir.

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307 Bardach, *Historia państwa*, p. 296; Spevéc, *Pravo bliže rodbine*; Vaneček, *Dejiny Štatu*, p. 117f.; Veselovskij, *Feodalnoe zemlevladenie*, vol. I, pp. 24–32; Beauchet, *Histoire de la propriété*, pp. 125 and 617; Gurevič, *Norvežskoe obščestvo*, pp. 145–149; Gul., 276; Frost., XII, 4 (*Ef madr vill ódal sitt selia […] En their eru kaupi naestir er nanastir eru, oc eigu tho allir bauggilldismenn bódo a*).

308 See. ARF under year 804 which exaggeratedly tells us: *Imperator* (…) *omnes, qui trans Albiam habitaverant, Saxones cum mulieribus et infantibus transtulit in Franciam*; see also MGH, *Epistulae*, vol. V, p. 300f. – a letter from 815, in which a Saxon aristocrat asks Louis the Pious to help him regain his patrimony seized by people who had taken advantage of the deportation of his father and others from Saxony to the land of the Franks.

309 Lintzel, "Die Stände der deutschen Volksrechte," p. 360.

We do not need to rack our brains over the genesis of that particular relationship. The Lombard freedman – *fulcfree non amund* – and his patron found themselves in the same legal situation. Let us recall that chapter 224 of Rothari's edict distinguished two categories of the freed *fulcfree*, that is, of those who had the attributes of full freedom. If the former master made his slave "folkfree and a stranger to himself" (*fulcfree et a se extraneum, id est amund*), he could not subsequently claim any rights to him: "And if he who is made legally independent dies without legal heirs, the king's fisc shall succeed him, not the patron or his heirs." If, however, the slave "has been made folkfree and given the choice of four roads, but has not been made legally independent and therefore is not a stranger, he shall live with his patron as with a brother or other related free Lombard. And if this one who was made folkfree does not leave legitimate sons or daughters, his patron shall succeed him, as is provided hereafter." Further below this passage, that is, in chapter 225, it was written that in the case of such a freedman's death, all gifts he made when alive remained in force; the rest is given to his legitimate sons, and if there are not any, then "the patron shall succeed him just as if he were a relative."

The reference in chapter 224 to the patron's successors indicates that the *mund* over the freedman was passed from generation to generation. The law of the Lombards did not respect the blood kinship relations from the times of one's bondage. This is why, in the first generation, only those sons born in freedom could be the legitimate heirs of the freedman. If there were not any, then the legacy of the freedman who was *amund* was taken by the fisc. The legacy of the freedman who was *fulcfree* but not *amund* went to the patron.[310] In the hierarchy of heirs, the patron was directly after any sons who were born legitimately, that is in freedom. This means the patron's position was like that of a brother. But in the second generation, the freedman could already have brothers or maternal or paternal nephews born in freedom, as well as male relatives on the side of his free mother. In the third generation there were, moreover, paternal and maternal cousins. Only after them was the patron-liberator or his offspring no longer "as if a brother" but now considered "as if a relative of the deceased, a free Lombard." He was always in the last position – after those who were entitled to the legacy as blood relatives – in line for the patrimony, and thus for the right of pre-emption, if the inherited estate was put up for sale.

310 See LL, Li, chapter 77 (see also chapter IV, subchapter I of this book, the text related with note 19 and Pieniądz-Skrzypczak, "Konkubinat," p. 355). For a more extensive discussion of this, see Modzelewski, "Liber homo," p. 37f.

The *tutor's* entitlements were exactly the same in title LXIV of the law of the Saxons. When a *liber homo* who was under a *tutor's mund* was selling his inherited estate, he first had to offer it, in accordance with the law of propinquity, to his blood relatives (*offerat eam primo proximo suo*); only when they did not want it, was he obliged to offer it to his *tutor* or to him who managed the property of the exiled *tutor*.[311] If he did not take the offer either, then the *liber homo* had a free hand to choose a buyer. There are more than sufficient grounds to claim that that *liber homo* was a freedman of the same category as the Lombard *fulcfree non amund*. He belonged to the category of the frilings, just as his Lombard equivalent was a free Lombard. To conclude on the basis of title LXIV of the law of the Saxons that all frilings were under the *mund* of edelings would be as absurd as the thesis that all free Lombards were freed *fulcfree non amund*.

There must have been among the Saxons, just as there were among the Lombards and the Franks, freed men and women of a higher category, independent from anyone's *mund*. But they did not constitute the category of frilings. On the contrary, it was the condition of the free tribesmen and women that was the point of reference, a model, a legal condition to which the slaves were raised through the act of manumission. The codifier of the Ripuarian laws expressed this idea very clearly in title LVII: a man who had been freed through the denarius before the king could not be made a slave again, but must remain forever free "just like all other Ripuarian Franks" (*sicut ceteri Ribuarii liber permaniat*). Manumission was an act of adoption into the tribal community that did not, after all, consist solely of freed men and women.

Liberi homines sub tutela nobilium, like the freed *fulcfree non amund*, occupied the lowest position within that community. It is even more noteworthy that even they enjoyed all property rights to their land. They sold it at their own discretion and only had to, like all others, respect the pre-emption rights of the potential heirs based on the law of propinquity. The patron's prerogatives in this respect

311 I agree with Lintzel's interpretation of the expression *qui iam in exilium missus est* ("Zur altsächsischen Rechtsgeschichte," p. 432): it is not *liber homo* but his *tutor* who is in exile – which is temporary because he still holds the right to property. For this reason, if blood relatives decide not to exercise the right of pre-emption, *liber homo* must offer his inherited estate to the *tutor* or to "him whom the king appointed to be in charge of that property." The latter, that is, the administrator appointed by the king, apparently appears here in place of the former and is thus in charge of the property of an absent *tutor*, and not the inherited estate that the *liber homo* wants to sell. That inherited estate is not part of the *tutor's* property since *liber homo* decides legally and on his own terms about its sale.

did not resemble a master's ownership, but resulted from the established artificial kinship relation; the patron inherited the legacy if there were no other blood relatives entitled to it and enjoyed the right of pre-emption if no blood relative used that right. The freed *amund*, primarily, people who had been free for generations, did not have a patron above them at all. There was nothing in the legal condition of the Saxon frilings that would imply their subjection to the land or personal authority of the edelings. The fact that some Saxons lost their own land and settled on someone else's had nothing to do with the general principle on which the social and legal superiority of all edelings over all frilings was based.

The wergilds and compositions were, above all, the indicator of that superiority. The fact that the public fine was twice as high for an edeling as that for a friling who had committed the same crime also shows how the edeling's superiority was understood. This resulted from a deeply-held conviction about differences in "the quality of the person" determined by birth. This was a moral difference; more is expected from someone considered to be better. Norms concerning the oath have a similar significance. From title XVII of the law of the Saxons it follows that in order to clear himself of the same charge – the murder of another man's slave – a friling had to swear an oath with twelve oath helpers while an edeling needed only four. In the law of the Frisians, a different proportion was observed, but the principle was similar; to clear himself of the charge of murder or of incitement to murder, a common free man had to swear an oath with half as many more oath helpers than a *nobilis* accused of the same crime. It was assumed that the accused chose oath helpers from the same social group (*adhibitis secum eiusdem conditionis hominibus iuret*).[312] They were most often relatives obliged by custom to swear a help oath. To provide proof of innocence required fewer edelings than frilings because an edeling's oath was of greater gravity. Being of noble birth, he was a much more credible man than his free fellow tribesmen. Let us recall that it was not the credibility of an eye-witness but the truthfulness of the accused that the oath helpers – clan members or friends – guaranteed in the sacred act of oath swearing. The norms concerning the number of oath helpers were based on an unshakeable conviction about the innate moral superiority of the edelings over the commons.

This conviction had a long life. In the 10th and 11th centuries it was the main argument justifying the aristocracy's claims to a monopoly on high offices in the state and the Church. The narrative sources of that time take it as entirely obvious that the *nobilis* is by nature better than the *ignobilis*, because thanks to his noble

312 LFris, titles I and II, pp. 34–42; see LSax, title XVII.

birth he has the moral, intellectual, and even physical virtues necessary to command in battle, preside over the courts, and advise in matters relating to the kingdom.[313] The conviction we find in the legal tradition of the Saxon tribes about the edelings' moral superiority was probably linked, despite the political differences, with a similar predestination to preside over the assembly and to lead in times of war. We can suppose that leadership virtues – passed from father to son – were attributed to the edelings: the ability to judge justly, to advise wisely, and to demonstrate valor in battle, with all of these abilities aided by supernatural forces.

This is what an ideal image of the political elite commanding respect from all could look like in the traditional society. The norms of the traditional law based on convictions concerning the moral superiority of the edelings seem more related to their leadership role in the tribal organization than to their wealth or standard of military equipment. The Bavarian analogy suggests the same. *Lex Baiuvariorum* does observe – like *Lex Salica* and *Lex Ribuaria* – the principle of the legal equality of free tribesmen protected with the same wergild of 160 solidi, but in title III, paragraph 1, it makes the first step towards the elevation of an aristocracy. This norm, formulated explicitly as a royal ordinance, gives a double wergild to the five families it names because they are "as if first after the Agilolfings who are a royal family." The reason, stated explicitly, why these families were singled out was their political position and not their otherwise unquestionable wealth.

Wealth was, no doubt, an inseparable companion to power, especially given the fact that leaders received a lion's share of the spoils of war – that is, cattle and hostages. They could thus secure for themselves a permanent reservoir of resources and could also afford expensive arms – the indispensible attribute of leadership and an emblem of high social standing. In the Lombard laws, the gradation of wergilds corresponded to one's social position in the tribal army and to the standard of one's equipment. In the laws of the Saxons, Thuringians, and Frisians, the wergilds and compositions of the edelings were a marker of the elevation of the ruling elite above the common people. In the Salic and Ripuarian laws, the principle of the equality of wergild of all freeborn Franks showed their rightful part in the political community of the Kingdom.

At a first glance, there are some major differences among the laws of the Germanic peoples. However, I would not be inclined to see this as evidence of profound differences in their political systems. Perhaps dissimilar historical circumstances caused different aspects of the traditional order to be brought to the

313 Michałowski, "Świadomość społeczna."

fore in the individual codifications. There is no doubt, however, that the powerful Frankish families had as early as during the rule of Clovis I and his sons effectively monopolized the leadership functions, and the terms the sources of those times used to describe those elites – *optimates*, *meliores*, *maiores natu* – expressed convictions concerning their moral virtues that were determined by birth.[314] On the other hand, there is ample evidence in the sources that despite the differences in legal status and social standing that divided the Saxon edelings and frilings, a close bond and a sense of tribal togetherness united them – until times changed.

Scarcely two generations had passed since the Carolingian conquest of Saxony when the foundations of the new order were shaken by a social revolt called the Stellinga uprising. The account of that event is given by as many as four unrelated sources: *Annales Xantenses* by Gerward, *Annales Bertiniani* by Prudentius, *Annales Fuldenses*, with the relevant part being written by Rudolf of Fulda, and the account of Nithard. *Annales Xantenses* accurately dated the revolt to the years 841–842, but eclipsed its social message with a bland platitude: "That year, across the entire Saxony, a great violence was inflicted by the slaves on their lords. And the slaves usurped the name Stellinga and they performed many irrational deeds. And the aristocracy of that land was very tormented and humiliated by the slaves."[315]

The slaves' revolt here is most probably rhetorical; perhaps Gerward drew inspiration from the topoi of ancient literature. The annals of Fulda called that same event "a very serious conspiracy of freedmen seeking to oppress their lawful lords" (*validissima conspiratio libertorum legitimos dominos opprimere conantium*). If Rudolf of Fulda did not use the term "freedmen" to achieve only a rhetorical effect, then it is possible he had in mind the *laeti*. Either way, E. Müller-Mertens is probably right in saying that by lowering the social status of the Stellinga, the terminology used by Gerward and Rudolf of Fulda seems to convey ideological content that the clergymen authors advocated rather than to faithfully describe the social reality.[316]

It is from Nithard that we get the most authoritative description of the social make-up of the Stellinga. He was a lay author, Charles the Great's grandson on the

314 Grahn-Hoek, *Fränkische Oberschicht*, pp. 56–77.

315 *Annales Xanteses*, p. 12: *Eodem anno per totam Saxoniam potestas servorum valde excreverat super dominos suos, et nomen sibi usurpaverunt Stellingas et multa intrationabilia conmiserunt. Et nobiles illius patriae a servis valde afflicti et humilitati sunt*.

316 *Annales Fuldenses*, p. 33f.; Müller-Mertens, *Stellingaaufstand*, p. 827f.

distaff side, that is, a cousin of King Lothair I, Charles the Bald, and Louis the German, who were then in power. The civil war was waged, we could say, in the family of Nithard who was amongst those best-informed about the political events of that time. He wrote down the news about the Stellinga uprising almost as it took place. He himself was killed in 844 or 845. He was not an impartial observer. In the conflict between the enthroned brothers, Nithard took the side of Charles the Bald and supported him with his pen as well. He meticulously noted down everything that could disgrace Lothair and interpreted the events he described in this vein. This may be why Nithard never mentions that the Stellinga uprising had already begun in 841, before the Battle of Fontenoy, the Oaths of Strasbourg, and Lothair's desperate attempt to gain allies against his winning brothers.

> Since I consider the affairs of the Saxons to be very important, I believe that they should not be omitted. […] This whole tribe is divided into three classes. There are those among them who are called *edhilingi* in their language; those who are called *frilingi*, and those who are called *lazzi*; this is in the Latin language nobles, freemen, and *laeti*. In the conflict between Lothair and his brothers the nobility among the Saxons (*pars Saxonum, quae nobiles inter illos habetur*) was divided into two factions, one following Lothair, the other Louis.
>
> Since this was how matters stood, and Lothair saw that after his brother's victory the people who had been with him wished to defect, he was compelled by various needs to turn for help anywhere he could get it. So he distributed public property for private use; he gave freedom to some and promised it to others after victory; he also sent emissaries into Saxony to the *frilingi* and *lazzi* who are infinite in number, promising them, if they should side with him, that he would let them have the same law in the future which their ancestors had observed when they were still worshipping idols. And they so wanting this beyond all measure, took on for themselves a new name that is Stellinga, they gathered and together drove almost all the lords from the kingdom; they lived by the old custom, each according to the laws he liked (*hinc etiam in Saxoniam missit frilingis lazzibusque, quorum infinita multitudo est, promittens, si secum sentirent, ut legem, quam antecessores sui tempore quo idolorum cultores erant, eandem illis deinceps habendam concederet. Qua supra modum cupidi, nomen novum sibi, id est Stellinga, inposuerunt et, in unum conglobati, dominis a regno paene pulsis, qua quisque volebat lege vivebat*).[317]

Nothing is said about slaves here. In Nithard's understanding, they were outside the community of the Saxons and the events described. With no hesitation did Lothair, Louis, and Charles's maternal cousin point to the frilings and *lazzi* as the subject of the uprising. They were organized, and able to enter into alliances and

317 Nithard, IV, 2.

put forward collective demands. Lothair's envoys had to have some partners to whom they made promises. According to Nithard, the uprising began when the frilings and the *lazzi* gathered together (*in unum conglobati*) and assumed the name Stellinga. These words suggest that something like a military confederacy was created at a general assembly. The name Stellinga itself, lawlessly assumed by the rebels as the sources emphatically inform us, most probably meant companions, comrades, or brothers in arms.[318] The rebels could successfully draw on the tradition of the assembly because it was still alive. Charles the Great had forbade the Saxons to hold tribal assemblies, yet on the local level, judicial assemblies were still held out of necessity and the frilings and the *lazzi*, alongside the local edelings, attended them as they had in the past.[319]

Yet it is the edelings, only briefly mentioned by Nithard as the highest Saxon class, that get lost in his on-the-spot report about the Stellinga uprising. In their stead there are the *Domini*, land lords, who were almost completely driven out of the country by the rebels. Although during the 40 years since the final conquest of Saxony a number of lay and church Franks must surely have come into possession of estates, the term *domini* refers primarily to the Saxon edelings. In comparison to the "infinite in number" frilings and *lazzi*, they must have constituted a rather small group given that the rebels could drive almost all of them out of the country (*dominis e regno paene pulsis*). This suggests that Saxon society consisted mainly of frilings and *lazzi*. The phrase *infinita multitudo* refers to the two groups collectively. We should not, however, overestimate the number of the *lazzi* for they constituted the lowest category of the freedmen and women derived from slaves. We can argue about whether the population of Rome of the early Empire consisted primarily of slaves, but it is not worthwhile to argue that this was so in tribal Saxony. Nithard's account suggests that in the middle of the 9th century, the free common population still constituted the majority of Saxon society and the edelings were the least numerous group. Within the four decades that had passed since the Frankish conquest, the proportions among the edelings, frilings and *lazzi* did not change significantly.

But the relations between these groups had fundamentally changed. It is true that between 841 and 842, political circumstances were conducive to the outbreak of social revolt: there was an armed conflict within the ruling dynasty and a schism among the Saxon edelings. But the time of the far more dramatic

318 Goldberg, "Popular Revolt," p. 481; Wagner, *Der Name*, pp. 131–133; for a slightly different and more cautious view, see Müller-Mertens, "Stellingaaufstand," p. 827f.

319 CPS, 34 and CS, 4 and 8.

wars with the Franks, between 772 and 804, also did not lack political upheavals and disputes. We would, however, vainly search in the annals that meticulously described the course of those wars and the events related to them for even the faintest echo of a revolt of the Saxon common people against their own tribal aristocracy. It seems that during those times, the tribal organization maintained its cohesion despite the social divisions. *Lex Saxonum* also mentions an oath sworn "on the hand of one's own *laetus* or one's arms" (*in manu liti sui vel sua arma iuret*). This was a ritual based on the conviction that for a *laetus* to act against his master was as unbelievable as for a weapon to turn on its owner, which was seen as a consequence of the gods' frightful curse.[320] Why did such a misfortune befall nearly all the Saxon edelings in 841–842? And what drove the frilings to stand with the *lazzi* against those who had traditionally been recognized as the ruling elite of the community? Something essential must have changed within the structures of social relations if the Saxon community, so cohesive until then, came to be torn apart by such a deep social conflict.

The two best-informed sources – Nithard and Prudentius, author of the *Annals of St. Bertin* (bishop of Troyes from 843) – in fact characterize the rebels' endeavors in an identical way. According to Nithard, everything began with Lothair promising the Saxon frilings and *lazzi* a restoration of the law from the pagan times, that is, from before the Frankish conquest. The Stellinga carried this out on their own and drove "almost all of their lords" from the kingdom, thanks to which everyone could live "as their ancestors had done" and "according to the law of his choice." Prudentius tells us that the uprising began before the Battle of Fontenoy and the Oaths of Strasbourg that sealed the alliance between Charles and Louis. The reference to Lothair's deal with the Saxon rebels appears in the *Annals of St. Bertin* under the year 841. The rebels appear here already under the name "Stellinga." They were an organized and – as Prudentius emphasized – considerable force (*quorum multiplicior numerus in eorum gente habetur*). In order to placate them, Lothair promised "to give each a choice between the present law and the custom of the old Saxons" (*obtionem cuiuscumque legis vel antiquorum Saxonum consuetudinis, utrum earum mallent, concesserit*).[321]

Eric J. Goldberg appreciated the significance of this information for understanding the social context of the uprising, but he interpreted the words *lex* and *consuetude* too literally. It does not seem that the norms of Charles the Great's capitularies from 785 and 797 and *Legis Saxonum* to which some norms of the

320 LSax, VIII, p. 19.

321 *Annales Bertiniani*, p. 38f.

oral legal tradition were opposed could be the object of the conflict.[322] Even if any of the Stellinga knew how to read, the chances one could come across a copy of the Carolingian codification are slim. The notion of the law was in those times very broad, encompassing the entire social order. This was a category somewhat similar to what we call a social system in our conceptual apparatus. For the Stellinga, a return to the old, pre-Christian law entailed the expulsion of the landlords and thus, a change of the agrarian structure. This is how Nithard understood this and recorded it. Prudentius's account, though more laconic, confirms Nithard's account. The Stellinga uprising must have filled both the authors and the Frankish elite with horror and the common people, undoubtedly, with hope. Yet both sides held the unanimous conviction that as a result of the Frankish conquest and Christianization, a profound change of the law, that is, of the political system, had taken place. Some defended the change, others attempted to undo it and restore the old order of things, but no one was of the opinion that the new order of things differed only slightly from the old. Perhaps for present-day historians, Nithard's and Prudentius's concurring opinion should also be binding. Seeing the image of the social system of Saxony under the rule of Louis the German as that of tribal times is inconsistent with the evidence from sources which state unanimously that the "old law" and the agrarian system underwent change after the Frankish conquest.

The meagerness of sources does not allow us to fully capture that change. Without putting forward any speculations about its course, we can state with no risk of error that the land-holding aristocracy advanced significantly. The fact that, according to the consistent evidence provided by sources, the revolt was aimed against the "lords" does not have to mean that in 841 every friling had a lord. The dispossession of the common free people of their property, and perhaps also of their personal independence, is unlikely to have taken place within four or five decades.[323] The information about the uprising suggests, however, that the frilings – including those who still lived on their own land and did not have a lord – felt menaced by the loss of property and full rights. In their eyes, the edelings were no longer, as before, an accepted ruling class, but an enemy who was reaching for power over them and their land. There is no doubt that the frilings were a threatened social group, significantly disadvantaged by the process of systemic changes. There is no doubt, either, that those changes worked to the advantage of the aristocracy. It was only after the Frankish conquest that

322 Goldberg, "Popular Revolt," p. 482.

323 I share this view with Müller-Mertens, "Stellingaaufstand," p. 835.

the edelings could shift from leadership within the tribal organization to ruling over their fellow tribesmen. What had previously prevented them from becoming lords over those they had led for ages? What were the institutions of the tribal system that for centuries effectively protected the common people from loss of land and freedom?

Chapter V. The Community of Neighbors and its Territory

In the understanding of the European barbarians, a free person was an inseparable part of the group. This was the foundation on which a person's position was based. If I may rather perversely make use of a basic term of the liberal axiology of our times, human rights were in those times a derivative of one's affiliation to a community, and the defense of those rights consisted primarily in the collective self-defense of the community. It was blood kinship, above all, that constituted that collective subject, which can be seen very clearly in the case of murder. The traditional norms concerning oath help or the *mund* over women are, moreover, related to the dictates of honor that the clan addressed collectively.

At the same time, fellow family members constituted the group of potential inheritors. The interests of this group limited the individual owner's freedom to administer land which was inherited up to three generations within the clan. The law of propinquity obtained in the case of such inherited lands which the Slavs called *dziedzina*, the Scandinavians *odal*, and the continental Germanic peoples *alod*. When *alod* was to be sold, the seller's relatives had the right of pre-emption as potential inheritors. In the case of a gift of such lands, these relatives' unanimous agreement was required. Otherwise, the overlooked relatives had the right of retraction (*ius retractus*), that is, to buy the estate at the price at which it was sold or to take back the land that had been donated without their consent.[324]

Both of these requirements relating to the law of propinquity – the right of pre-emption to which the relatives were entitled and the ban on lawless gifts – appear in the law of the Saxons, but were added there for particular reasons. In title LXIV, which I have already discussed, the codifier acted in the interests of an edeling who held patronage, which was understood in terms of the familial *mund* (*tutela*), over a freedman. When that freedman decided to sell his inherited estate, the patron, on account of this artificial kinship, was entitled to pre-emption if the "closer," that is, blood relatives, did not use that right themselves. The general rule of the law of propinquity was thus written down so that the patron's particular prerogatives that were based on it could be specified.

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324 See above, chapter IV, note 82 in this book.

The same can be said about title LXII of the law of the Saxons, although in this case it involved the interests of the king and the Church, and not those of the aristocracy. The prohibition to lawlessly give one's inherited estate to anyone who was not entitled to it while leaving out the legitimate heirs was the general rule here. It seems that the motivation for the addition of title LXII to the law code are the exceptions that it introduced. It states that: "No one is allowed to give away one's own inherited estate unless it is a gift to the Church or the king" (*Nulli liceat traditionem hereditatis suae facere praeter ad ecclesiam vel regi ut heredem suum exheredem faciat*). Further on, another exception to the rule was added: "unless he is forced by hunger to obtain support from him who receives the gift" (*nisi forte famis necessitate coactus ut ab illo qui hoc acceperit sustentetur; mancipia liceat illi dare ac vendere*).

Removing the limitations that prevented land gifts to Church institutions and the king was, obviously, an innovation. Before the Frankish conquest, after all, the Saxons did not have a king and were pagans. The reason why the traditional law of propinquity was tampered with seems obvious. The obstacle limiting the expansion of royal and Church property had to be removed. It is hard to say to what extent the reservation that permitted land gifts in situations of extreme privation allowed the secular aristocracy to evade that obstacle when taking over other people's allodial land. We do not know whether in this case the exception to the rule was also an innovation, or if it was based on an old custom. What can be seen, however, is that the family law of propinquity had protected the properties of free tribesmen, limited the tribal elders' opportunities for taking over their inherited estates, and impeded the transformation of the edelings' leadership into their rule over the frilings.

This was neither the only nor the most important impediment on the way to that transformation. Kinship collectivism did not merely protect an individual from being deprived of his inherited estate, and the property and economic security of a free person did not rest solely on that person's familial belonging. When it came to the rural economy and the protection of the entitlements that were linked with it, membership in a community of neighbors played a particularly significant role.

1. The Neighborly Community of the Commons

Any remarks about the communities of neighbors of early medieval Europe need to begin with a short survey of the economic reality of those times. This will allow us to avoid the traps of platitudes. We can read in even relatively ambitious works that one thousand years ago land was plentiful and the expansive primeval forests

supplied game and other gifts of nature in abundance, and so there was no need to ration access to forest commons. These statements lure us with the seeming obviousness of the commonplace, but they are false.

In comparison to modern agriculture, the rural agriculture of early medieval Europe was extremely extensive. Land was usually ploughed with a coulter which was pulled by two oxen. These animals were resistant to harsh breeding conditions but much smaller and weaker than the cattle of our grand grandfathers. The plough was a tool more efficient than the coulter because it ploughed more deeply and turned the ridges, but what prevented its widespread use was the high price of the iron parts (the coulter was much less expensive than the ploughshare with the knife) and the fact that tillage with a plough required more traction. Moreover, the shepherd character of breeding meant that there was nothing with which to fertilize the majority of arable land.

A man poorly equipped with tools and cattle had to adjust to natural conditions. Fragments of information from different parts of Europe suggest that crops were poor; out of a bushel of sowed grain, two to three bushels were gained after the harvest and threshing. When the crops were poorer, a farmer faced a dramatic alternative: starve but sow, or eat the grain and starve the following year. The requirements of food security motivated, on one hand, a widespread support of agriculture through the more extensive exploitation of the environment (grazing, harvesting, hunting, and fishery), and on the other, the prevention of harvest decrease caused by soil depletion. The landscape of fields differed significantly from its present-day version. The early medieval farmer had to carefully select pieces of land for cultivation. Ploughing with a coulter required light and filtering soils that were simultaneously sufficiently fertile to produce crops for food and sowing. These were loosely scattered plots rather than compact and vast fields separated from one another by boundary strips.

Shallowly ploughed with a coulter and not fertilized, the plots quickly became depleted, which made the crops fall below the level of reproduction. Sowing rotation – for instance, the two-field crop rotation system – was usually not sufficient to prevent the problem. So the depleted field was left lying fallow for several years until the natural process of fertility restoration made it cultivable again. The shrinkage of the cropland caused by leaving fields fallow had to be compensated for by either ploughing and sowing other fallow lands or by cultivating lands that had not yet been cultivated, lands that belonged, in other words, to no one. The possibility of legally appropriating such land was a fundamental requirement of economic security in the conditions of the alternating wheat and fallow system of cultivation. Thus, taking up new land, usually by clearing it of

roots, not always meant agricultural expansion. It was also an ordinary element of survival.[325]

Access to forest, pasture, and water commons, at times remote from one's household, was also a condition of survival. It is true that some forest was always at hand, but it was nothing like the bourgeois idea of a "forest" as a homogeneous entity. Pig breeding, which played a crucial role in medieval agriculture, can serve as the most illustrative example. Acorns and beechmast were the pigs' fodder in those times, while breeding itself was of a pastoral character. Oak and beech forests did not grow everywhere. Herds of pigs were driven to those forests from settlements sometimes as far as several kilometers away. Zoologically speaking, the pigs of those times were not much different from wild boars. Their legs were long and they could walk. Obviously enough, people walked with them in order to look after the herd and stock up on acorns and beechmast for winter. The oak and beech forest stands constituted a particularly precious kind of forest and pasture commons. The sources often tell us that these commons were rationed. Also subject to legal regulations, transactions, disputes, and bans was the lumbering of trees, fishing in rivers and lakes, and hunting. The diversity and the irregular location of these resources meant that the realm of the economic interests of a farming family encompassed at times vast expanses of land reaching far beyond the village horizon.[326]

Kings reserved fishing districts for their own exclusive use. The sources also at times mention private forests. Usually, however, a forest was not the subject of proprietary privileges. Yet gardens, arable lands, vineyards, and meadows were always, by nature, as it were, someone's property. The Salic law protected their inviolability with high fines (e.g., the fine for ploughing someone else's field without permission was 45 solidi) and described all these types of land with one word: *labor* (work, cultivation).[327]

In title XVII of the Bavarian law, one more type of land property was specified: *exartum*, that is, clearing (newly cleared):

> 1. If any man irregularly enters another's meadow, cultivated land, or clearing (*exartum*) contrary to law and says that it is his own, let him compensate with six solidi because of his audacity, and get out.

325 Duby, "La revolution agricole" and "Le problem des techniques;" Rösenner, *Bauern*, pp. 119 and 130f.; Jäger, "Bodennutzungsysteme;" Podwińska, *Technika*, pp. 109–143, 165–172 and 255–281; Leciejewicz, *Słowiańszczyzna*, p. 71–73; Modzelewski, "Społeczeństwo," pp. 224 ff. and *Chłopi*, pp. 24 ff.

326 Podwińska, *Zmiany form*, p. 362; Modzelewski, "Organizacja opolna," pp. 181–183.

327 PLS, XXVIII, 17, 20, 31 and IX, 9.

2. If, however, he wishes to lay claim to that cultivated land, meadow, clearing, or wherever this dispute occurs, let him lay claim in the following way. Let him swear with six oathtakers and say, "I have not gone contrary to law where you had earlier worked, nor ought I to compensate with six solidi or get out, since my work and labor were previous to yours" (*Ut ego in tua opera priore non invasi contra legem nec cum VI solidis conponere debeo nec exire, quia mea opera et labor prior hic est quam tuus*). Then let the possessor say, I have witnesses who know that I have always done the work of the field; I have plowed, cleared, and possessed this land to the present day, which no one can contradict, and my father left it to me in his inheritance.

The witness had to be one of the neighbors (*conmarcanus*) and had to say under oath: "I have heard with my ears and seen with my eyes that this man's work on this land was previous to yours and that he reaped the fruits of that labor." (*Quia ego hoc meis auribus audivi et oculis meis vidi, quod istius hominis prior opera fuit in isto agro quam tua et labores fructum ille tulit*).

The text cited above allows us to formulate a number of conclusions. The first is rather obvious; *exartum* is an object of individual ownership, just like land that had been ploughed and sowed for a long time. Forests were usually cleared to prepare land for cultivation. Yet the forestland was usually nobody's property. Clearing turned a piece of land into individual property, and was thus paramount to legal appropriation.

This concerned not only land that was covered with forest growth, but all land previously uncultivated and legally appropriated for cultivation. It became the property of the man who first cleared it of wild vegetation and then ploughed, sowed, and harvested it. The main, though not the only, condition that made such appropriation legal was that no one had cultivated it earlier. This was not always easy to determine. To tell uncultivated (and thus belonging to nobody) land from a fallow field of several years may at times have proven difficult. This is clearly related to the dispute described in paragraphs 1 and 2 of title XVII of the Bavarian law.

The man who seized someone else's land and insisted on his rights to own it did not claim that he had inherited it from his father, or bought it or acquired it as a result of exchange. He only claimed and was trying to prove by swearing an oath in the company of his six oath helpers that he, and not the accuser, first worked on the disputed land. This was a sufficient title for ownership. What this suggests is that the "seizure" or "invasion" (*invasio*) of someone's meadow, land, or clearing entailed taking that land for cultivation. It is hard to imagine that both claimants had worked on the same field. It is more likely that the disputed land had been fallow for some time, and as a result the man accused of "seizing it unlawfully" had the right to believe, or at least claim, it was uncultivated land

which he had only just appropriated through his labor. The accusing party, on the other hand, had to prove the opposite by using a witness to demonstrate his title for ownership which was based on the fact that he had either worked on the land first (*quod istius hominis prior opera fuit in isto agro quam tua*) or inherited it (*pater meus reliquid mihi in possessione sua*).

This is the oldest source evidence of the principle that the legal appropriation of land for cultivation was equivalent to establishing an individual's ownership title for that land. From the end of the 8th century on, this manner of appropriating no man's land appears in ever more documents under the Germanic name *bifang* or its Latin equivalents (*comprehensio, captura*).[328] The words literally meant "seizing," "capturing," "appropriating," and constituted an equivalent to the Slavic term *zaimka*, still used until recently in the Russian language. In the times of extensive irregular rotation and fallow, the right to *bifang* was, for a family farm, a basis for economic balance and security and one of the most important guarantees of survival. *Bifang* was, at the same time, an integral part of a larger system of entitlements to forest, pasture, and water commons which constituted an object of the community of neighbors.

It is a real paradox that the issue of the early medieval communities of neighbors has been neglected for several decades in German historiography, which had in the 19th century and at the beginning of the twentieth excelled at research in the field. The decline in interest, leading to a break in the continuity of this research tradition is often explained, partly, by the long-term influence of the school of Heinrich Dannenbauer and Theodor Mayer. The founders and followers of that school saw the world as organized on the principles of power and hierarchical personal relationships. A structure based on neighborly relations and the common use of the natural resources of a given territory did not suit that vision of the world and so did not seem an important element of the medieval system.

Moreover, classical historiography did not manage to avoid serious mistakes in its research on the communities of neighbors, which later led to the questioning of its achievements. Beginning with Jacob Grimm and Georg Ludwik von Maurer, through Hermann Wopfner to the last defender of the traditional theses, Fritz Wernli, the central category around which the concept of the community of neighbors was built was the notion of the *mark*.[329] This was linked with the abuse of retrogression; the relations in late medieval, and even early modern villages,

328 Bethge, "Űber Bifänge;" Kroeschell, "Bifang," HRG, vol. I, columns 418–420.

329 Grimm, *Deutsche Rechtsaltertümer*, vol. II, pp. 9–17; von Maurer, *Geschichte der Markenverfassung* and *Einleitung*; Wopfner, "Beiträge" (see also Dopsch's rejoinder, "Markengenossenschaften"); Wernli, *Zur Frage der Markengenossenschaften*.

were considered a reliable starting point for conclusions concerning the agrarian system in the early Middle Ages. The critics of the traditional concept rightly noted that village communities came into being as a result of the considerable intensification of agriculture that was linked with the dissemination of the wheeled forecarriage plough and the introduction of a three-field crop rotation system, as well as a mandatory rotation of sowing. This marked a profound change in the structures of settlement and a reorganization of the agrarian space that accompanied them. A reconstruction of early medieval relations on the basis of knowledge about the commons in the late medieval villages disregards the breakthroughs that took place in between, and must therefore lead us astray.[330]

The German term "*mark*" often appears in medieval sources, but it is highly ambiguous. It literally meant a border, or more precisely, a border sign. It was, however, usually used in the territorial sense. It was used to describe a particular territory, and it could have been the territory of one village, of a bigger district, or even of a stretch of land. Ruth Schmidt-Wiegand has rightly observed that in title LXXVIII of the Ripuarian law, which speaks of the obligation of publicly showing a found horse "along three boundaries (*marchas*) and after this […] at the stone column around which the king's court is held" (*per tres marchas ipsum ostendat, et sic postea ad regis stapulum*), the term *marcha* means a local judicial district where a regularly-held assembly took place. Schmidt-Wiegand also reminds us of a Runic inscription in Kírstadt where the word *aljamarkir* is used to describe a foreigner, of a mention made by Marius of Avenches who described Childebert II's kingdom as "*marca Childeberti regis*," and of "*marca Winedorum*" mentioned by Fredegar, which referred to a land of the Slavs headed by "*dux Vinedorum Wallacus*."[331]

In the Carolingian documents of the 7th and 9th centuries, we can frequently read about a person granting his entire land to the abbey "in village N. and in that *marca*" (*in villa N. et in eodem marca*). This is a routine, official phrase, most probably taken from a form, that is, a ready sample that the scribes used when editing documents. It was meant to emphasize – just in case – that the owner gave the abbey his entire property, located both in the village and its vicinity. There is no need to search beneath this protective formula for any deeper meaning and to draw far-reaching conclusions. It is true that in early medieval documents the Latin term *terminus* (literally "border," i.e., an etymological equivalent of *marca*)

330 Rösener (*Bauern*, p. 57f.) and Bader (*Dorf*, p. 7) have noted that.

331 Schmidt-Wiegand, "Marca," pp. 78f., 76 and 88; LRib, LXXVIII; MGH, *Auctores antiquissimi*, title XI, p. 239; Fredgar IV, 68 (MGH, ss merov., vol. II, p. 157).

was at times used to mean the territory of the commons. It does not seem, however, that the word *marca* had already become a technical term of precisely such meaning at that time. It is only in the late medieval Weistums that the phrase *gemeine Mark* appears as an undoubtedly technical term denoting a borough territory of the commons also known as *allmenda*.

Yet, just because the early medieval neighborhood communities differed from the late medieval village boroughs and were not called *marks* does not mean that they did not exist. Unfortunately, research on them has not been continued. The monographs by Karl Hans Ganahl (1940–1941) and Hans Theodor Hoederath (1951)[332] remain the last words of scholarship on this issue. Both authors still used the term *mark*, yet both relied on a meticulous study of the documents of the Benedictine monasteries in St. Gallen (Ganahl) and in Werden on the Ruhr (Hoederath), and their conclusions are soundly argued. We can and should refer to them. To undertake the discontinued research tradition in this field is a large undertaking that surpasses my ability and is beyond the scope of this book, but I cannot leave out the issue of early medieval communities of neighbors in barbarian Europe.

The agrarian structures of Merovingian and Carolingian Gaul had been shaped by nearly six centuries of Roman rule. The presence of the Frankish newcomers did not essentially alter that legacy. We can speak, however, of a concentrated Germanic settlement in Austrasia, in the eastern and north-eastern peripheries of the Frankish state. The same can be said about the tribal territories of the Alemanni, Thuringians, Bavarians, Frisians, and Saxons. As these lands were gradually yielding to Frankish authority and Christianization, Benedictine abbeys appeared there: Werden on the Ruhr, St. Gallen at Lake Constance, Fulda, Prüm, and Lorsch. The provident endeavors of the abbots of those abbeys to enlarge their property through new and often small land grants, and through purchase, barter, and land clearing, as well as their archiving of those acquisitions and their meticulous storage of documents are invaluable for the historian. The written traces of these activities are like a few street lamps in the dead of night. Beginning in the 8th century, they allow us to glance into the everyday economic life of the agrarian societies of "Germanic Germania."

Every source has – as historians are wont to say – its own "optics." It is a product of a particular point of view linked with the point of view of the one who wrote or instructed someone else to write the text. The picture of the neighborhood structures perceptible in the documents of the vast property holdings of the church is

332 Ganahl, "Die Mark;" Hoederath, *Hufe*.

fragmentary, because the horizon of the scribes did not reach beyond the fences of the abbey property and beyond the sphere of the interests of the home abbey. Moreover, the scribes used ready forms and took stereotypical phrases from them. When in the documents we repeatedly encounter words written as if through carbon paper stating that someone granted an abbey some land "with all its appurtenances, that is, meadows, pastureland, waters, fisheries, roads, and paths," then there is no doubt that this is an official formula and not a meticulous description of the reality. There are also quite a few documents that state explicitly that on the basis of ploughland title the owner has the right to use particular forest, pasture, and water commons. The main unit of ploughland to which the access to those lands and resources was related is described in the sources as *hova*. In modern German the word is *Hufe* ("hoof"), and in this text we will use *hova* or "yardland." Accepting this translation convention, I have to warn the reader, however, of misleading associations with a precise land measurement. What these terms usually mean is the general notion of land belonging to a one-yardland farm.

In 796, a certain Teganbald – "a free and noble Frank" – sold to Liudger, abbot of the abbey in Werden, some land in the village of Fischlaken on the Ruhr. That is, he sold "that entire yardland that is called Alfatinghova, together with pasturelands […] and a share (*scara*) in the forest commons adequate to [the owner] of a full yardland" (*illam hovam integram Alfatinghova, cum pascius* […] *et scara in silva iuxta formam hovę plenę*).[333]

In accordance with his entitlement, Teganbald had earlier taken a large piece of forest in Fischlaken in order to clear it. He did not do the job, however, or at any rate, he did not finish it, but gave by way of barter the forestland he had taken for clearing (*rotum*) to a certain Folkbert. In Folkbert's document of February 14, 799, we read: "I had owned that clearing land called Widuberg for a couple of years and worked on it as much as I could. Now, I have given the said clearing turned into ploughland – the amount of land that had ever been ploughed – to Abbot Liudger in exchange for the ploughland of that yardland called Alfadinghova. This is how I received that yardland from Abbot Liudger, my neighbor, for the ploughland of the abovementioned clearing […]."

On the same day, Abbot Liudger drew up a document for this barter. On this occasion he also explained in detail what the formula restricting the granting of a yardland solely to ploughland meant: "Now I have given the said yardland in the form of ploughland, the amount that had ever been ploughed, to Folkbert in exchange for the clearing called Wideburg […], with the reservation that I,

333 LUN, vol. I, no. 7.

Liudger, have kept the right appurtenant to that yardland to use the forest, water, and pasture commons and to take land [for clearing and ploughing] (*excepto quod ego Liudgerus dominationem que ad illam hovam respexit, mihi retenui, seu in silua, siue in agris et pastu, uel in comprehensione, cum omni integritate iuri meo reseruaui*).[334]

As can be seen, the right to use the appurtenances indeed followed from owning ploughland. Bartering the Alfatinghova yardland, Liudger had to add to the document of the contract a special reservation in order not to lose, together with the ploughland, the appurtenant share in forest, pasture, and water commons. What is particularly noteworthy here is the list of the commons specified in the abbot's document of 799. They were described as *dominatio in silva* and it was explained that they meant the right to use forests, waters, and pastures, including the right to *bifang* (*comprehensio*). We find a very similar formulation in a document of July 4, 793. In that year, Gottschalk, son of Kasmar, gave part of his inherited estate in Alfredshausen to Abbot Liudger, together with the appurtenant *bifang*, and emphasized that "All this lies within the territory of Wittorf. When it comes to the forests belonging to this territory, I have given the aforementioned abbot as many rights to pasture animals and cultivate the land, to cut down trees and take land [for clearing and ploughing, that is, the right to *bifang* – K. M.] as are due when owning one yardland" (*Omnia autem hec in termino sunt Withorpe. In quo etiam termino dominationem tradidi in siluam que per circuitum iacet, quantum pertinet ad unam houam, ad pascua animalium, seu ad extripandum, uel ad comprehendendum*).[335]

The cited documents of 793 and 799 were drawn up by the same receiver, which no doubt contributed to the use of the same expressions. But similar contents, though clad in slightly different words, can also be found in documents drawn up beyond the sphere of influence of the abbey of Werden and its scriptorium. In 854, a dispute was resolved between a certain Notger and the abbot of the St. Gallen abbey, Grimald, over the ownership of ploughland in Brannen and use of the forest there. Pursuant to the compromise, Notger gave the abbey 92 morgens of ploughland, acknowledging at the same time that the abbey and its people "will have the right to use the lands in the aforementioned forest between the rivulets Gonzenbach and Müselbach for pasture, for timber, for felling trees [for firewood] and all the things a man can use in a common forest. And if there is anything in that forest that has not been taken yet [marked as clearing

334 LUN, nos. 12 and 13.

335 LUN, vol. IV, no. 600, p. 759 (4 July 793).

land – K. M.], then they will have the right to take land without running the risk of attack from anyone."[336]

Similarly to Abbot Liudger's documents, we can notice here a connection between ownership of ploughland and the right to use forest and pasture commons. Here, as well as with Abbot Liudger, the right to *bifang* (*comprehensio*), that is, to take a piece of land in a forest to clear it and cultivate it, constituted an integral part of the set of rights to use forest commons.

Those rights were specified as *potestas utendi* in the document of Abbot Grimald of St. Gallen. In the documents from Werden, the expression *dominatio in silva* appears in an identical context. Literally, it would mean "ruling" or "reigning in the forest," but here a literal interpretation would lead us astray. In the documents of 796 and 799, the same rights to forest commons resulting from owning the same Alfatinghova yardland were described once as *scara in silva* and later as *dominatio in silva*.[337] Both documents were drawn up under the supervision of Abbot Liudger. He apparently treated the expressions *scara in silva* and *dominatio in silva* as equivalents. The Germanic word *scara* meant a "share," an ideal, numerically defined part of a greater whole.[338] In a document of 793, the term *dominatio in silva* had an identical meaning. In that year, Gottschalk gave his land in Alfredhausen to Abbot Liudger: one full yardland. As a result of this, together with the cultivated land, the abbey was also given "command over surrounding forests in the extent due to an [owner] of one yardland when it comes to pasturing animals and clearing, that is, taking the land" (*dominationem* […] *in siluam* […] *quantum pertinet ad unam hovam as pascua animalium seu ad extirpandum vcl ad comprehendendum*).[339]

The expression *dominatio in silva* did not mean, as can be seen, land rule over woodlands but a share, numerically defined, in the commons. It is coincidental that in the three documents cited above the extent of the use of the commons was defined by the ownership of one yardland of ploughland, but these were

336 USG, vol. II, no. 426.

337 LUN, vol. I, no. 7 (796) and no. 13 (799).

338 Hoederath, "Hufe," note 63, p. 226. In the oldest urbarium of the abbey of Werden, there is, under the heading *de holtscara in Uiti* (RUrb., vol. II, p. 3 n.), a list of pasture shares on both sides of the Ruhr made in the first part of the 9th century. What was used to measure those shares was the number of pigs that one was allowed to pasture in the forest and the greatest share belonged to the abbey as a result of ploughland purchase ("Alurik sold us his patrimony in Lapenheld with the appurtenant right to pasture").

339 LUN, vol. IV, no. 600, p. 759.

only particular cases of a more general principle. In 855, a widow named Cotiniu deeded 77 morgens of land to the St. Gallen abbey, half as a devotional gift and the other half as sale. The widow received from the abbey 40 solidi and 10 morgens of land between the villages of Rorsach and Goldach for the part she sold. At the same time, Abbot Grimald guaranteed that Cotiniu herself and her children could "pasture pigs and other livestock, fell tress, and make any other use of the commons according to the size of the inherited land (*iuxta quantitatem hereditatis*) she owns there, that is, in Rorsach, as well as the land we have given to her in the aforementioned village of Goldach."[340]

People who did not have a full yardland were also entitled to a share in the commons. The fact of having settled on the territory of the community and owning at least one croft (*curtile*), that is, a place of dwelling and a bit of fenced land, sufficed. A document of 812 gives us an idea of the size of such crofts: Gundwin and Adelbold sold to Bishop Hildigrim "a croft (*curtile*) in the district of Bunnengo, in the village of Mellenbeim, and the croft is 120 feet long and 56 feet wide." Yet even a croft as small as this constituted – though, to an adequately meager extent – a pass to the commons. In 801, Betto sold to Abbot Liudger of Werden "a small part of his inheritance […] in the village of Holtheim, that is a croft (*curtile*) with the appurtenant clearing, a small meadow and one morgen of ploughland together with everything else to which the [owner] of the croft is rightfully entitled, namely, pastures, walkways, waters, and a share in the forests appurtenant to the aforementioned village together with the right to pasture adequate to the croft" (*cum* […] *omnibus que ad ipsum curtile legaliter respitiunt, hoc est pascuis, peruis, usibus aquarum dominationem-que in siluas ad supradictam villam pertinentes cum pastu plenissimo iuxta modulum curtilis ipsius*).[341]

In 858, royal vassal Tuto gave Louis the German by way of barter two crofts, amongst others, in the village of Ultretsheim "as well as a share in forest commons (*waldmarka*) that always belonged to him by virtue of ownership of those crofts" (*ualtmarca, que de ipsis curtilibus semper habere uisus fuit*).[342] In 890, the St. Gallen abbey documented that in the Rheinigau district it had "the same rights resulting from legally and publicly made gifts and from rightfully owned crofts there to forest commons as any free man, who legally and rightfully owns a property, has to use the forest, fell the tress, and graze pigs" (*quod nos, fratres de morasterio Sancti Galli in pago Ringouve de iustis et publicis traditionibus atque*

340 USG, vol. II, no. 44, p. 62, 844.
341 LUN, vol. I, no. 30, 812 and no. 20, 801.
342 Cod. Laur., vol. I, no. 32.

legitmis curtilibus talem usum habuimus, qualem unusquisque liber homo iuste et legaliter debet habere in […] *silvis, lignorumque succisionibus atque porcorum pastu*).[343]

The abbey, no doubt, had ploughland in abundance, but Abbot Salomon's carefully drawn document brought to fore its ownership of the crofts as title to a share in the commons. The dispute in this case did not concern the extent of rights, but whether the abbey was entitled to them on that territory. In the rather general formulation concerning that issue, it mentioned the crofts (and not their other yardlands) since they were what constituted a material symbol of the settlement of the abbey's people, and of the presence of the abbey amongst the owners there. He who had a croft, had also a share, however small, in the commons.

A share in the forest commons, described as *dominatio in silva*, *scara in silva*, *waldmarka*, or *holzmarka*,[344] included a set of various rights amongst which the right to *bifang* seems particularly important. The possibility of clearing and cultivating virgin land meant much more than a mere condition of the balance of land economy of those times, always threatened by soil impoverishment. *Bifang* also changed the legal status of the land taken and the position of the owner. Land ownership could come from different sources. All possible ownership titles were enumerated in a document of 805 in which Liudger, Hredger's son, and Hiddo, Herewin's son, gave the entire land they owned in two villages "by way of inheritance, or *bifang*, or acquired in any other way" (*aut per ius hereditatis, aut per conprehensionem, aut per aliam quamcumque adquisitionem*)[345] to the abbey of Werden. Thus land taken as *bifang* was considered individual property in the same way as land received through inheritance, gift, barter, or purchase. But *bifang*, similarly to royal land grant, was not in the first generation part of one's familial inheritable estate. It could, therefore, be granted to someone else or sold without worrying about the law of propinquity to which the relatives were entitled. This is why church institutions made a note of which of the acquired lands had the status of *bifang*.

Comprehensio, *captura*, *"caeptum*, that is, *bifang*"[346] meant cutting out a piece of land from the territory of the commons for full ownership. Together with the

343 USG, vol. II, no. 681, p. 281.

344 See Cod. Laur., vol. I, no. 32 (*waltmarca*) and RUrb., vol. II, p. 20 where the terms *Holtigewilditi* (a Germanic synonym to the phrase *dominatio in silva*) or *Holtmarca* are used as equivalent descriptions of forest commons to which one was entitled on account of owning ploughland.

345 LUN, vol. I, no. 27.

346 UBF, vol. I, no. 275, p. 399.

enlargement of land ownership, the owner's share in forest, pasture, and water commons also increased. In this way, the right to *bifang*, even more so than the right to graze pigs or fell trees, protected a free man from being declassed and falling into dependency. Admittedly, a man was entitled to *scara in silva* proportionate to the amount of land held, so a poor croft owner could not take a disproportionately huge stretch of land for clearing. He could, however, combine his modest entitlements and efforts, performing a *bifang* together with others. He could also do so on his own, yet in accordance with the entitlements that a wealthier relative agreed to lend to him. In 801, Walto, together with fourteen fellows of his (*socii mei, quorum nomina haec sunt*) gave the abbey in Fulda "*bifang* that was taken [probably by them] in the village of Berghohe" (*capturam hanc, quae de villa Berghohe capta est*).[347] Abbot Liudger of Werden was not a poor man, but apparently he did not have the right to *bifang* in the place where the part of the Heissi forest he wanted to have was located. He thus turned to people who had the appropriate entitlements. In 800, Efurwin, Hildirad, and Irminwin, "co-inheritors and co-owners of the same property," upon the abbot's request, agreed to "hand over to him that *bifang* in the forest called Heissi which Liudger himself wished to have, and on our behalf, Hildirad took [that *bifang*] together with him and marked it […] and we thus also hand over to the abbot, in a similar way, a certain share in the forest there [that is, Heissi – K. M.] (*placuit nonbis* […] *tradere* […] *in manus eiusdem presbiteri* […] *in silva que dicitur heissi conprehensionem illam, quam ipse Liudgerus ibi desiderauit et Hildiradus in nostro nomine conprehendit simul cum eo et consignauit* […] *et in manus eiusdem presbiteri simili modo tradidimus et dominationem aliquam in eandem siluam adiacentem*).[348]

The marking of the land meant for clearing mentioned here constituted an act of land taking and equaled a demarcation of the borders of what, from that time on, was to be individual property. Only someone authorized could do it, Hildirad in this case, while Liudger accompanied him only to show him the piece of land he wanted to get. After the border was drawn and marked, the land become the property of Efurwin, Hildirad, and Irminwin who – already as owners – gave it immediately to the abbey. People authorized in this way could make it possible for someone who did not have the necessary entitlement to acquire the *bifang* and a specified share in the community of lands and forests.

The marking of the land taken made it also possible to control the legality of *bifang*. It had to be – as was often emphasized in documents – "circumscribed

347 UBF, vol. I, no. 275, p. 399.

348 LUN, vol. I, no. 17.

with clear marks" (*comprehensio euidentissimis signis circumgirata*).[349] This made it possible to determine whether the *bifang* did not exceed the rights to which the owner was entitled, whether the land to which someone else had earlier reserved the right was not appropriated, or whether people who were not entitled to it had not attempted to clear the land.

Disputes, and even violent conflicts, arose over such issues. In order to resolve such a dispute, in 850 "an assembly was held in Lutaraha under the chairmanship of Matton where Rudolt gave Fricco, village mayor of Abbot Hatto of Fulda, *bifang* which he had unlawfully taken in the forest" (*factus est conuentus in Lutaraha Mattone praesidente, in quo Hruodolt comprehensionem siluae, quam iniuste comprehendit, Fricconi aduocato Hattonis abbatis reddidit in praesentia testium*).[350] What was probably at stake was that the land in the forest taken by Rudolt had earlier been reserved by the abbey of Fulda. This is why the unfortunate grubber was not simply chased away or forced to desist from his intention, but gave that *bifang* to the abbey.

The dispute between the St. Gallen abbey and Notger of Brunnen, which ended in 854 in the already mentioned compromise, had slightly different grounds. It involved allowing the abbey's people to use the forest commons, including *bifang*, in the forest between the rivulets Gonzenbach and Müselbach. What the words of the document suggest is that those people had been denied access to forest pastures and were not allowed to fell trees for timber and firewood, while any attempts to take land for clearing provoked aggression. There was a reason for that; the abbey did indeed have extensive property, but apparently did not have any land on the disputed territory. Only the compromise, according to which Notger gave Abbot Grimald 92 morgens between Mosnang and Algetshausen, allowed the abbey peasants to participate peacefully in the forest commons and take virgin land in the forest that no one had reserved "without any fear of being attacked by anyone."[351] Apparently, earlier they had been chased away from the forest as unauthorized strangers.

What constituted an entitlement to the land and forest commons and to the taking of virgin land was having a freehold over land that was not distant, over the hills and far away, but in the vicinity. The owner entitled to pasture, clearing, and *bifang* had to be a local man, belonging to the community and not a stranger.

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349 LUN, vol. IV, no. 602, 802.

350 CDF, no. 560, 850.

351 USG, vol. II, no. 426 (*et si quid in eodem saltu minime sit comprehensum, comprehendendi potestatem habeamus absque ullius infestatione*).

It is worthwhile to search for a way of specifying those terms. Numerous documents indicate that access to the commons and the right to *bifang* were subject to rationing, and thus to control. Who exercised this control? The late medieval village parishes were usually subject to landlord authority, but early medieval sources by no means indicate that the commons were subject to any such authority. Both large and small owners had the right to use the same forests, however unequal that use was. A certain Rudolt who took a piece of forest land that had been earlier reserved by the abbey of Fulda had to give up the *bifang*. Yet it was neither Abbot Hatto nor village mayor Fricco, but an assembly presided over by a third party that summoned him to effectively give it up. The purview of this assembly was apparently recognized by both parties.

It appears that control over the use of the land and forest commons was exercised by an organized local group of people. Can they be identified with the group that claimed the exclusive right to those lands and forests? What kind of a group (or groups) was it, and what did the territorial scope of the commons controlled by that collectivity look like? These questions are too important to leave without an answer.

2. The Territorial Scope of the Community

A small group of neighbors empowered to give or deny a stranger access to its territory appears already in the Salic law, title XLV (*De migrantibus*, that is, "Concerning Those Who Move"): "If a man wishes to move into another village (*villa*) [after being invited? onto land?] in place of someone else, and one or some of those who live in the village wish to receive him, but there is one of them who objects, he may not have the right to move there" (*Si quis homo super alterum in villa migrare voluerit et unus vel alliqui de ipsis, qui in villa consistant, eum suscipere voluerit, si vel unus extiterit, qui contradicat, migrandi ibidem licentiam non habeat*). What follows is a description of how to proceed in case a stranger wants to settle down in the village despite opposition. He who objected had to express his protest three times in the presence of witnesses and tell him to leave the village within ten days. If after thirty days he still did not depart, the one who objected summoned the reluctant newcomer to the court assembly (*maniat eum ad mallum*). If he failed to appear, the objecting villager summoned the count to remove the intruder. The illegal settler then lost the fruits of his work in that place (*quod ibidem laboravit demittat)*. Moreover, he was fined thirty solidi. "If a man has moved [into another village] and no one has protested against him for twelve months, let him remain where he has settled and let him be secure just as the other neighbors are" (*Si vero quis admigravent*

et ei infra XII menses nullus testatus fuerit, ubi admigraverit securus sicut et alli vicini maneat).

The interpretation of this text poses a couple of problems. It is relatively easy to interpret the sense of the term *villa*. Lexically speaking, it could mean an estate or a village, but the possible co-owners of the estate (*consortes*) would not be described as "those who live in it" (*ipsi, qui in villa consistunt*), and certainly not as neighbors (*vicini*).[352] After a year, if there was no opposition, the newcomer became one of them (*siciut alii vicini*), but not a co-owner of their estate.

Thus the term *villa* in this case means a village. In the circumstances of those times, a village was a settlement of a very modest size: from a few to over a dozen families. This small neighborly group was treated as a subject empowered to decide, according to the principle of unanimity, whether to accept a stranger into its group or not. Enforcing the binding veto of one of the neighbors was not a prerogative of the co-inhabitants of the same village, but of a wider community, that is, the community of the assembly and the court (*mallus*).

It is more difficult to decipher the meaning of the phrase *super alterum*. Does it mean that the newcomer settled on someone else's property, as a tenant on land belonging to someone else? Or, has the newcomer settled "after being invited by another man," which can be understood more broadly, for instance, as lending the stranger the right to clear the land for cultivation? Hildirad's example instructs us of such a possibility. In 800, upon Abbot Liudger's request, he took and marked and then gave Liudger the *bifang* in the Heissi forest.[353]

Let us note that after the thirty days intended for three protests had passed, and after the case had been brought to and considered by the assembly, which could last a further couple of weeks, the newcomer would already have had some gain, the fruits of his labor (*quod ibidem laboravit*), that he could lose as a result of disregarding the protest and failing to appear at the court. One may get the impression that the norm from title XLV of the Salic law concerned a modest settler working on someone else's land or clearing land for himself on the sweat of his brow. This is how it most probably usually was. Sometimes there were also more prominent newcomers. We learn about them from title XIV: "If anyone contrary to the king's command presumes to halt (*testare*) or attack a man who is trying to move somewhere (*migrare*) and has a permit from the king [to do so] and can show it [*abundivit* - the king's privilege] in the *mallus*, he shall be liable to pay two hundred solidi" (*Si quis hominem, qui alicubi migrare voluerit et de*

352 Bader, *Studien*, vol. II, p. 133f.

353 LUN, vol. I, no. 17.

rege habuerit praeceptum et abundivit in mallum publico, et aliquis contra ordinationem regis testare praesumpserit […] *solidos CC culpabilis iudicetur*).

The similarity of these terms does not allow us to doubt that this is a situation analogous to the one described in title XLV. A foreigner, a non-local, intends to "settle down" among the local people. This was described similarly to title XLV with the verb *migrare*. A local person protests trying to force the newcomer to leave. And here again, the neighbor's protest is described with the same term as in title XLV: *testare*. This time, however, the stranger does not arrive *super alterum*, at someone's invitation or to settle on the land of one of the village inhabitants, but on the basis of a royal privilege. The stranger is not just anybody. Perhaps he does not even intend to settle among the locals but only to take and settle his own people – his slaves, *laeti*, and tenants – on the land which the king allowed him to manage. The local people have a well-grounded fear, so they resort, according to the old law, to a procedure forbidding a stranger to enter their territory and their group. This is the same procedure that is mentioned in title XLV. This norm did not come into being – obviously enough – after it had been written down on parchment, but had been recognized for generations. But the codifier no longer permits the use of this norm against the powerful protégé of the king. The old law cannot act against the king's will, and the punishment for protesting against a king's order equals the wergild of a free Frank. On this occasion – and it is not just any occasion – we learn that the tribal legal tradition had allowed the neighbors' group to defend access to their territory against all strangers and not only poor settlers.

Historians have long compared title XLV of the Salic law with the norm written as *extravagans XI-B* outside the text of the codification proper. Unfortunately, the text of that norm is incomplete, which makes it difficult to understand without the supplement suggested by A. Halban-Blümenstock: "*Non potest homo migrare nisi convicinia et herbam et aquam, et via* [*concedente*].[354] In this reconstructed form, it means: "A man cannot move if all the neighbors do not [give him] grass and water, and road […]." Perhaps in the missing passage, apart from the listed material symbols denoting access to pastures and fishing, there was also some material symbol for the forest commons. There is no doubt, at any rate, that acceptance of a stranger's settlement meant giving him access to a share in the commons shared by neighbors. When compared with title XLV, *extravagans XI-B*, indeed, seems to be a kind of dot over the "i".

354 See Halban-Blümenstock, *Entstehung*, p. 225.

Only the co-inhabitants of a village had the right to object to a newcomer's settlement there. If none of them voiced any protest over the course of a year, the stranger became "one of their own" and acquired a permanent right to the commons shared by the other neighbors. This does not mean, however, that the territory of the commons involved only one village. The inhabitants of a village constituted close neighbors who had much in common in their daily lives. Let it suffice to say that they grazed cattle together, taking turns to tend to the herd. It would not have been a huge herd if the pasture territory could not extend beyond the nearest vicinity. The location of the forest commons (especially the oak and beech forest stands), including fishing waters and other natural resources, forced the inhabitants of various villages to share those resources in practice. According to the urbarium of the Werden abbey from the turn of the 9th and 10th centuries, the inhabitants of the villages of Ikinghein, Atrop, and Hoch-Emmerich had a share (described as *holtmarca* or *holtigewildithi* – a Germanic equivalent of the phrase *dominatio in silva*) in the Vluyn forest commons. An inhabitant of one of the villages was driving pigs "to Althassel and other forests, and to Vluyn, as his other co-inheritors were." According to another urbarium of the 10th century, owners of yardlands in the villages of Arenbögel, Sterkrade, Dümplen, and Gladbeck could all share the forest commons of the Mallingforst massif.[355]

This information is obviously fragmentary. The urbaria mention only those arable lands and forest commons linked to them that were acquired by the abbey through purchase, barter, or gift. The perspective of the sources that had been produced for the needs of the church was limited to the property interests of the Church and does not offer a full picture of the commons shared by the community of neighbors. We know that this community extended across villages. Usually, however, we are unable to capture the territory in its entirety. It would have required a specific set of circumstances for the church institution to document fully, in defense of its own interests, the territorial scope of the forest, pasture, and water commons.

Such an event occurred in 890 on account of a dispute between the St. Gallen abbey and the *comes* of Linzgau, Count Udalric. The narrative of Abbot Salomon's document states explicitly that the commons used collectively by the neighbors of the entire Rheinigau district (*in pago Ringovue*) were the object of the conflict. On virtue of the land held and crofts owned there, the abbey was entitled in this district, except for four forest grounds reserved for the king, to "the same rights

355 RUrb., vol. II, pp. 20 and 27.

to those commons as every free man should have by virtue of owning property" – namely, to "pastures, forests, tree felling, pig grazing […], fishery […]. Moreover, in accordance with the needs of the abbey, we were felling trees in the mentioned district for the building of aqueducts and shingles and we took them to the abbey from there. Apart from that, in order to take the things we needed across the Lake Constance, we also felled there trees to build ships [or rafts – *novalia ligna ibi succidimus ad necessaria nostra per lacum asportanda*]. What is more, also herds of pigs were taken for grazing from the abbey premises to the local forests."

No one questioned any of this until King Arnulf gave his manor in Lustenau, "in the already-mentioned district Rheinigau," to Count Udalric. The *comes*, thus endowed with the royal manor, apparently must have concluded that he at the same time acquired authority over the commons in the entire district. On the strength of his jurisdiction in the county of Linzgau that included the Rheinigau district, "that *comes* took away from us all the commons we had been using before in this district […] and he did not want to make anything available to us either in Lustenau or anywhere else in the aforementioned district unless we paid for it. He forcibly took away from us the shingles we had earlier prepared to cover the roof of the St. Gallen basilica and made us use them to cover his own house in Lustenau."

Abbot Salomon was, however, also the bishop of Konstanz; he was highly influential and knew how to defend himself. On his request, "all the mighty (*omnes principes*) from three counties, that is, from Thurgau, Linzgau, and Chur, and the common people gathered in the presence of Tiudolf, bishop of Chur, and the aforementioned Count Udalric, in the place where the Rheine flows in the Constance Lake in order to examine, on the king's order, to which of the above mentioned commons in the Rheinigau district the abbey is unconditionally entitled by virtue of law and for which it had to pay."

Udalric held to his own opinion. He accomplished nothing, however, as all the mighty from the three counties who were gathered there (*principes omnes de illis tribus collecti comitatibus*) testified under oath that the abbey and its people, **together with the other inhabitants of the district**, were entitled to all the commons in dispute (*quod* […] *usus omnes isti, ut praediciti sunt, et nobis ad monasterium nostrisque mansis in nostris territoriis* ***in pago prenuncupato commanentibus cum illis civibus absque contradictione essent communes***). The territorial scope of the community sharing the commons was demarcated by the rivers, "from the river bed of the Eichelbach as far as the Schweinbach, excluding Eichberg which is a separate terminus (*qui specialis terminus est*) and three royal forest reserves: Kobelwald, Diepoldsau and Ibrinesouva." The witnesses also pointed to the border separating the Thurgau and Rheinigau districts; it ran from Schwarzenegg to Monstein and further along the river bed of the Rheine up to Constance Lake.

The act of demonstrating the border between the districts was carried out "under the same oath and in the same group" (*eodem quippe iuramento et comitatus*) as the other arrangements. It was, therefore, part of the same testimony in the dispute about the commons. Just as the river beds of Eichelbach and Schweinsbach, the border separating the Thurgau and Rheinigau districts marked the territorial scope of the community of people sharing the commons, a community in which the abbey defended its share.[356]

Denying the St. Gallen abbey any share in this community, Count Udalric treated the abbey as an external subject, "not from here," because the seat of the abbey was located outside the territory of the district. This is why Abbot Salomon emphasized so strongly the existence of the many crofts it had in that district where the abbey peasants lived. The formula that the abbey had the right to the commons in dispute by virtue of legal ownership of crofts on that territory was repeated twice in the document (*quod de legitimis curtiilibus usus omnes isti* […] *et nobis ad monasterium nostrisque mansis in nostris teritoriis in pago prenuncupato commanentibus cum illis civibus* […] *essent communes*). This was to be proof that in the Rheinigau district the abbey was not "alien" but, on the contrary, "ours" and entitled – in equal measure as other land and house owners on that territory – to use the natural resources there.

Pagus (district) Rheinigau constituted only part of the county of Linzgau, yet it comprised a considerable stretch of land and a cluster of settlements consisting of a certain number of villages. The St. Gallen monastery had land and houses in some of the villages there, though not in all of them. Abbot Salomon's document does not name the villages where the abbey peasants lived. He makes do with a statement that their crofts and arable lands were located within the Rheinigau district. This was enough to claim the right to all pastures, forests, and waters that lay within that territorial unit except for the four forest grounds reserved for the king. What is more, the words of the document seem to suggest that also the other land and house owners *in pago Ringouve*, irrespective of in which village their houses were located, could use the natural resources in proportion to the property held on the entire territory of the district. *Pagus* Rheinigau was a territorial unit that corresponded with the area of a multi-village community that shared common natural resources.

But the border of the Rheinigau and Thurgau districts, demonstrated under oath by 48 witnesses, marked something more than merely the scope of the commons that the abbey had in mind. This was simultaneously an administrative border.

356 USG, vol. II, no. 680, p. 281f.

In this respect, Rheinigau and Thurgau were not equivalent units. Thurgau was a county (*comitatus*) while Rheinigau lay within the territory of Linzgau county. The names of the 48 witnesses whose testimony resolved the dispute, were arranged in the document of 890 according to the counties: 29 *de Durgeuve*, 7 *de Raetia* (that is, from Chur) and 12 *de Lintzgeuve*. The last group must have included the inhabitants of the Rheinigau district, no doubt best informed about local relations, yet they were described as witnesses from Linzgau county. The *terminus inter Durgeuve et Ringouve* pointed out by the witnesses was, from the point of view of the inhabitants of Thurgau, the eastern border of their county. From Abbot Salomon's point of view, what was most important was the fact that the western border of the Rheinigau district marked the territorial scope of the commons that the abbey, together with the local population, had the right to use, despite Count Udalric's objections. At the same time it was, however, as Hans K. Schulze notes perceptively, the western border of Linzgau county.[357] *Pagus* Rheinigau was thus a segment in the territorial structure of that county.

We know more segments like this. Within Linzgau county, apart from the Rheinigau district, the certified districts are Argengau and Schussengau. Already in the 8th century, there was *pagus* Arbongau and *pagus* Zürichgau, while in 806, *pagellus Hegauvi* was on the territory of the Thurgau county.[358] Their place in the structure of the districts governed by a *comes* did not probably differ from what Abbot Salomon's document allows us to state in relation to Rheinigau. It is a unique document because it tells us about phenomena taking place repeatedly in everyday life, phenomena that are not usually reflected on in the sources. The circumstances that compelled the abbot to organize an assembly to deal with Count Udalric's usurpation were unique, too. But the fact that the territory of the Rheinigau district was an area of commons for the local population and for the royal territorial administration a segment of the county was a rule rather than an exception.

Comes administration was introduced in Alemannia on the Frankish model and probably at the Frankish initiative. The county was a novelty, but the reformers did not demarcate their borders. It was not possible to divide the country into districts governed by a *comes* by running one's finger over a map. They were created out of segments that had already long existed, and that were not brought to life by a decree, but out of the territories of commons that had been engaged by particular clusters of settlement. Before the Franks brought the models of state organization here, tribal organization had to have been based on the same local communities.

357 Schulze, *Grafschaftsverfassung*, p. 86.

358 Schulze, *Grafschaftsverfassung*, pp. 84–87; USG, vol. I, no. 190.

Chapter VI. The Political Dimensions of Neighborhood

Civilized observers noted that the territories of the barbarian tribes consisted, like a honeycomb, of many local cells. Profound importance was attached to the information about the number of such local cells. The *Description of cities and lands north of the Danube* (*Descriptio civitatum et regionum ad septentrionalem plagam Danubii*), written in the times of Louis the German and conventionally known as the *Bavarian Geographer*,[359] gives us, in fact, precisely this kind of information. It describes the tribal territories as *regio*, while local centers are called *civitas*. The source enumerates the ethnic names of the particular tribes or federations of tribes, and lists the number of *civitatum* for each tribe. The federations of tribes were treated here as political entities. The author of the *Geographer* knew that the Veleti (*Vuilci*) were a group consisting of four tribes, yet he did not name the Redarier, Kessinians, Circipani, and Tollenser, but only stated that their federation consisted altogether of 95 *civitates*. The Sorbs were treated similarly. Although this federation indeed consisted of several tribes (*Surbi, in qua regiones plures sunt*), they were not named. Only the sum total of their *civitatum* was given – 50. For the tribes that were not part of larger politico-military structures, a separate number of local centers was given. The Sleenzane (Ślężanie) from the vicinity of Wrocław and Niemcza had, according to the *Geographer*, 15 *civitas*; the Dadosezani (in the vicinity of Legnica and Głogów) had 20; the Opolans also 20, etc. As can be seen, the author was interested in political structures, and he treated the number of local centers as an index of the demographic and military potential of the particular tribes or federations of tribes.

This is how Louis the German's entourage perceived the Slavs. Eight or nine hundred years earlier, the Romans had viewed the Germanic tribes in a similar way, although Caesar and Tacitus obviously used different terminology than the author of the *Bavarian Geographer*. It would not have crossed the mind of any Roman to use the proud word *civitas* to describe some center of barbarian rural settlement, even if it was fortified with a palisade or a mound. In *Germania*, Tacitus used the term *civitas* to describe the political organization of a tribe (*natio*). Caesar used the term *regio* to describe the tribal territory, but the local cells belonging to that territory appear in both Caesar and Tacitus under the name *pagus*. This was a common noun that the Romans used to refer to a rural district where there was no

359 Zakrzewski, *Opis*; Łowmiański, "O pochodzeniu" and "O identyfikacji nazw."

city, that is, a local unit of lower order than a municipal territory. Despite the different vocabulary, the Roman authors and the *Bavarian Geographer* had very similar notions about the territorial structures of the barbarian tribes.

Caesar wrote of the Suebi that they were the biggest and the most warlike of the Germanic tribes.

> They are said to possess a hundred districts, from each of which they yearly send from their territories for the purpose of war a thousand armed men (*Hi centum pagos habere dicuntur, ex quibus quotannis singula milia armatorum bellandi causa ex finibus educunt*). The others work for a year and maintain the ones at war who return after a year and are replaced with others. Thus neither field work nor war is ever discontinued.

Regardless of what we might consider to be a result of a misunderstanding or a product of the imagination in this colorful story, there is no doubt that the number of districts in the times of Caesar was an index of the demographic and military potential of the tribe, because the *pagus* played a key role in the general levy. It was also the basic cell of the judiciary on its territory held by the chiefs of the particular tribes and districts (*principes regionum atque pagorum inter suos ius dicunt controversiasque minuut*).[360]

Tacitus repeats the information about the hundred districts, perhaps after Caesar, but he relates it in chapter 39 of *Germania* not to the entire federation of the Suebi but to the largest tribe that held hegemony in that federation, that is, to the Semnones. He considered the foundation of their hegemonic position to be the place of cult where the representatives of all Suebi tribes (*omnes eiusdem sanguinis populi*) gathered periodically. And their massive number: the Semnones live in "a hundred cantons, and from that great group is born the belief that they are the head of the Suebi" (*centum pagi iis habitantur, magnoque corpore efficitur, ut se Sueborum caput credant*).

Tacitus, too, emphasized the role of the local districts in the organization of the tribal military forces and the judiciary, yet he did not repeat the information on this issue after Caesar. He had other, better sources, primarily Pliny the Elder. It is probably from Pliny that Tacitus took his low evaluation of the military efficiency of the Germanic cavalry: "To make a general judgment," he wrote in chapter 6 of *Germania*, "their might is more in infantry, and so they battle intermingled: exactly suited to a cavalry engagement is the speed of certain infantrymen, who are selected from all the youth and stationed before the battle-line. Their number is also set, at one hundred each from every *pagus*: that is what their own people call them, and what began as a number is now a name of honor" (*centeni ex singulis*

360 Caesar, BG, IV, 1 and VI, 23.

pagis sunt, idque ipsum inter suos vacantur, et quod primo numerus fuit, iam nomen et honor est).

In chapter 12 of *Germania*, Tacitus described the judicial functions of the tribal assembly, after which he added: "Likewise in these assemblies are chosen the leaders who administer justice in the *pagi* and hamlets; each has a hundred associates from the commons, who provide influence as well as advice" (*eliquntur in iisdem conciliis et principes, qui iura per pagos vicosque reddunt; centeni singulis ex plebe comites consilium simul et auctoritas adsunt*).

It is not difficult to discern a common theme in the cited sources. What constitutes this theme is information which is both credible and – despite appearances – not quite banal. The observers of the barbarian world unanimously thought that the number of local districts was a measure of the military force and political significance of the particular tribes and federations of tribes. They based this opinion on knowledge of the functions of those districts in the political organization of the tribes. It seems that the *pagus* indeed played a crucial role when warriors were mobilized to go on expeditions and constituted the basic unit of the judiciary. This much we know. The sources provide many more details, yet they also raise various doubts.

The numerical data are the most misleading. The information given by Caesar that the Suebi maintained an army of a hundred thousand warriors can safely be shelved with the fairytales. It is not important whether the conqueror of the Gauls proved gullible in this case or whether he dreamed this up himself. Either way, he could have been prone to exaggerating the Germanic power.

Despite appearances, Tacitus's military arithmetic does not look any better. What a comparison of the information about a hundred young foot-soldiers from each district (chapter 6) and the number of districts among the Semnones suggests is that the tribe had 10,000 such warriors. Taking into consideration that these were select troops fighting in the vanguard (*quos ex omni iuventute delectos ante aciem ponant*), and that the rest of the marshalled army had to be at least several times more numerous, we get an army close in size to Caesar's idea but very remote from the demographic reality of Europe in those times.

However, what accompanies the hardly credible mention about the hundred select warriors *ex singulis pagis* is a remark of the author that should not be underestimated: according to Tacitus, the word that initially signified the number one hundred became a "name" (of an institution? of a military formation?), and an "honor" (*et quod primo numerus fuit, iam nomen et honor est*). We are dealing here with a piece of information overheard somehow (perhaps from Pliny the Elder), literarily impressive and possibly misunderstood, on which Tacitus may have based his own construction.

There were numerous misunderstandings in the communications between the barbarians and the representatives of Roman civilization caused by cultural differences and simple lack of knowledge. The Romans' interest in the barbarians concerned their political institutions rather than their everyday life and local structures, and this was reflected in what they learned in their encounters with the barbarian world.

It seems that Tacitus did not know about the local assemblies that functioned according to the same rules as the tribal assemblies. This may be the reason why in chapter 12 of *Germania* Tacitus writes, after describing the tribal assembly courts, that "Likewise in these assemblies are chosen the leaders who administer justice in the cantons and hamlets." Tacitus credits those leaders with absolute power and treats the one hundred associates chosen from amongst "the commons" (*centeni ex plebe comites*) as a retinue that gave them advice and enhanced their authority.

This is an obvious misunderstanding. The unanimous evidence provided by later sources leaves no doubt that the judicial system of the Germanic peoples was of the assembly character on each of its levels. Irrespective of whether the pronouncement of the verdict ("the speaking of the law") was made by the same man who presided over the assembly or by a group of *rachinburgi*, the verdict was in the end passed through an act of acclamation. Tacitus himself described this decision-making mechanism in chapter 11 of *Germania* and states at the beginning of chapter 12 that it was the council that passed the verdicts in matters of life and death (*Licet apud concilium accusare quoque et discrimen capitis intendere*). What he had in mind, though, was the tribal assembly. Tacitus was not aware of the fact that such assemblies were held in each of the local districts. This is the reason why he mistakenly attributed the true information that local magistrates were chosen (also, of course, through acclamation) to the tribal assemblies. The picture that emerged from Tacitus's account is worthy of a centralist state. The main governing body of the tribe supposedly nominated the leaders of the particular districts and sent them to the local communities to mete out justice. For this same reason Tacitus misinterpreted the information about the local courts, assuming this assembly to be the district leader's retinue that accompanied him in his office.

What did the word *centeni* have to do with this? Admittedly, it is not likely that precisely one hundred people gathered at the assembly in each district. It is also impossible that a hundred young men were chosen from each district to join the elite troops that fought alongside the cavalry in the vanguard. Both of these cases are instances of misunderstanding, and in both cases the word *centeni* is used in relation to the notion of the district (*pagus*). Claudius von Schwerin considered this to be the oldest evidence of the territorial *centena*. In his view, chapters 6 and

12 of *Germania* speak of the *centena* districts, and that their Germanic name had been misinterpreted by Tacitus.[361]

This idea met with a scathing critique from Heinrich Dannenbauer and from Heinrich Brunner before him,[362] but it seems that these rejoinders were too harsh. It is true that Tacitus did not have the *centena* or any other institution in mind when he used the word *centeni* in chapters 6 and 12 of *Germania*. This was an ordinary numeral and in each case he used it to refer to different people; the fast-running youth were not necessarily suitable to act as court advisers. But it is also true that Tacitus's statements were to a large extent based on misunderstandings. Perhaps what happened resembles what happens in the children's game "telephone"; the initial information got distorted in the subsequent links of the communication chain. *Germania* was the last link of that chain, and not everything included in it can be taken at face value. At times the reconstruction of information does not raise considerable doubts because one can readily see what came to be distorted and how this occurred. This is the case with the district council mistakenly taken to be the district leader's entourage. At other times, there are more numerous doubts. Von Schwerin's conception meets the requirements for posing a hypothesis because it gives coherent sense to information which is evidently distorted. Yet it is far from being unquestionable. We can guess that in chapters 6 and 12 the word *centeni* is a distorted echo of the Germanic term for district (in Latin, *centena*), but this guess will not stand the burden of proof. In the dispute regarding the Germanic *centena*, it is the interpretation of the medieval sources which proves decisive.

1. *Centena*, *Pagus* and *Go*

Although the term *centena* does not appear in the Salic law, the word *centenarius* appears twice. According to title XLIV (*De reipus*), a man who intended to marry a widow, had to "take her before a thunginus or hundredman so that the thunginus or hundredman may convene a court" (*hoc est, ut thunginus aut centenarius mallo indicant*). The same procedure obtained in the case of the adoption of an heir (*acfatmire*), which instituted artificial kinship between two people and the right to inheritance. "It should be done thus," we read in title XLVI, "The thunginus or hundredman should convene a court assembly. In the court he should have a shield" (*Hoc convenit observare ut thunginus aut centenarius mallum indicant et*

361 von Schwerin, "Hundertschaft," p. 108f.

362 Dannenbauer, "Hundertschaft," p. 185f. and note 26; Brunner, *Deutsche Rechtsgeschichte*, vol. I, p. 159f. and notes 12 and 13.

scutum in ipso mallo habere debeant). Both cases concerned the solemn validation of a change in kinship relations. This had to be effected at the assembly in the presence of the man who usually presided over it and with the meticulous observance of rituals of magical origin. Amongst the many requirements imposed by the ritual was also the condition that the man presiding over the assembly – a *thunginus* or a hundredman, in this case – must have a shield.

It is not possible to explicitly define the relation of the hundredman to the *thunginus* on the basis of these two references. We only know that their role is identical and that the role was significant for the Franks of those times. If the assembly was presided over by the hundredman, was the *thunginus* not there at all? Or was, perhaps, the hundredman the *thunginus's* helper, his right-hand man who could stand in for him if need arose? There are no answers to these questions. We can only categorically rule out two possibilities. First, the *centenarius* is not acting here as the count's subordinate, that is, as a representative of the *comes* administration of which we know from later sources. Second, it is not possible to link the hundredman with some putative sub-district, a unit of lower order than the territory of the assembly (*mallus*) headed by the *thunginus*. The Salic law does not know such sub-districts.

Set against the background of the other barbarian laws, where the judges represented royal jurisdiction, the *thunginus* was worlds apart; he ruled in the realm of rituals and magical words and gestures. He presided over the assembly court, but did not pronounce the verdicts. "To speak the law" was the *rachinburgi's* prerogative and their verdict was validated by the assembly's acclamation. The creditor who claimed debt repayment in court had to take the debtor to the assembly and there address the *thunginus* thus: "I ask you, *thunginus*, that you oblige my adversary who gave me his promise and owes me a legitimate debt." The *thunginus* then had to speak the following formula: "I oblige that man to [do] that which Salic law requires." If the debtor still refused to pay, he ran the risk of financial penalties, and an administrative execution of the debt. It was not in the hands of the *thunginus* to carry out this administrative coercion. The creditor had to take the *rachinburgi* to the debtor's house to evaluate the property in relation to the debt and summon the count there to take the evaluated possessions.[363]

The count could do this because as a royal official he had the right to implement administrative duties of enforcement. He could not, however, preside over the court, pass verdicts, or even evaluate the possessions which he had to take when summoned to the debtor's house. His duties and the duties of his aides (called

363 PLS, title L, 1–4.

sacebarons) included only enforcement proceedings and the collection of penalties, including public penalties (*fredus*), which were partly allocated to his salary. The count was also summoned to remove a foreign settler whom the neighbors had rejected from their community. Yet, before coercive measures were taken, the intruder was summoned to the assembly (*maniat eum ad mallum*) where the count had nothing to say. It was the *thunginus* who presided there.

As a royal official, the count was protected with a triple wergild. The *sacebarons* were also entitled to a triple wergild, although they were frequently the king's *laeti* (*pueri regis*).[364] The *thunginus*, however, was not entitled to a triple wergild. The reason for this disharmony is obvious: the *thunginus* was not a royal official. He was head of the local community of the assembly and the court. The *mallus* could not function without him. This is why the descriptions of the legal and ritual acts through which were effected the severing of the bond with one's clan (title LX of the Salic law), the inclusion of a stranger into the group of clan members and inheritors (title XLVI), or obtaining consent for a widow's remarriage from her relatives (title XLIV) always emphasized that those acts had to take place at an assembly before the *thunginus* (*in mallo ante tunginum*). What is characteristic in this respect is the Malberg gloss in title XLVI: the resolution of doubts concerning a stranger's entitlements to inheritance should take place "either in the presence of the king or in a legitimate public assembly, that is, in the language of the Malberg: before the *theudans* or *thungin*" (*ante regem aut in mallo publico legitimo, hoc est in mallobergo ante theoda aut thungino*). *Thiudans* is one of the Old Germanic words for king, and *thunginus* here is a personal symbol of the *mallus* assembly.[365]

The community of the assembly headed by the *thunginus* also had a territorial dimension. Obviously enough, every free Frank had to know where his assembly was held. This depended on one's place of residence. Title XLVII of the Salic law specifies in detail the court procedure in case someone recognized his stolen property – a slave, a horse, or any other household animal – at the house of an inhabitant of a remote place. The *mallus* of the person recognized to be in possession of

364 See PLS, title LIV: "1. He who kills a count shall be liable to pay six hundred solidi [a triple wergild of a free Frank – K. M.]; 2. He who kills a *sacebaron* or count who is a servant of the king [literally the king's boy – *puer regis*] […] shall be liable to pay three hundred solidi [i.e., a triple wergild of a *laetus*]; 3. If anyone kills a *sacebaron* who is a freeman […] he shall be liable to pay six hundred solidi; 4. There should not be more than three *sacebarons* in each court [*in singulis mallobergis*]."

365 In this respect, my view differs from that of Wenskus ("Bemerkungen zur Thunginus," pp. 65–84) who sees an equivalence in the terms *rex* and *thunginus*, and in effect considers the *thunginus* to be a local kinglet (*Kleinkönig*).

the stolen property was where the parties involved had to meet, and where they had to resolve the issue (*ista omnia in illo mallo debent fieri, ubi ille est gamallus, super quem res illa primitus fuerit agnita*). The prefix *ga-* in the word *gamallus* literally means "*co-*"; thus, *gamallus* literally means a member of the community of the assembly. It was the community of free Franks defined by place of residence and thus both a social group and a territorial unit.

The *centenarius* mentioned in titles XLIV and XLVI of the Salic law fits into the archaic context. He appears as the alter ego of the *thunginus* within the community of the assembly, specifies the date when a solemn act is to be performed at the assembly, and when the act is carried out, he personally presides over the assembly. The court and the administrative executors are two separate institutions in the Salic law. A *centenarius* acted in the sphere of the assembly and of the court, as well as within the community. He had nothing to do with the hierarchy of royal administrators and servants, that is, the count and the *sacebarons*. It is true that exacting the court's decisions at times required administrative coercion. Some executors, therefore, had to be ready at hand. Yet it was carefully monitored that their presence at the *malloberg* did not exceed the necessary minimum: "There should not be more than three *sacebarons* in each court" (*Sacebarones vero in singulis mallobergis plus quam tres non debent esse*).[366] It was obviously out of the question for any of the three to act as a master of ceremony.

In title I of the Salic law, the territory of the local community of the assembly is described as a *pagus* (district). The use of term *centena* to refer to a district appears only in the mid-sixth century decrees of the kings Childebert I and Chlothar I about keeping the peace (*Pactus pro tenore pacis*). The clumsy edition and the copyists' mistakes make this source's meaning unclear in places, but an interpretation that draws on the wider context allows us to understand its sense. Taking into consideration the ineffectiveness of neighborhood night watches, which had often turned a blind eye to thefts and robberies, as they was often working in collusion with the thieves, Chlothar decided in chapter 9, to burden the *centenas* with material responsibility for the losses incurred by the victims of the crimes. The *centena* on the territory of which a theft or robbery had been committed had to cover the losses of the victim and pursue the so-called "track" (*vestigium*), that is, launch a hunt for the offender. If the "track" led to another *centena*, then that other *centena* had to continue the hunt, catch the criminal, and hand him over. Everyone who, despite being summoned, avoided taking part in the hunt was liable to pay five solidi. The material obligation to cover the losses was also transferred, together

366 PLS, LIV, 4.

with the "track," to the subsequent *centenas* – the second, or even the third. If the victim, pursuing the "track," caught the thief himself, he could take from him the entire composition (*conpositionem*); if the runaway was caught by the hunting group (*trustis*), or the hundred conducting the hunt, they took half of the penalty and exacted from the criminal the equivalent of the loss they would otherwise have to pay to the victim inhabiting the *centena*.

Chapter 16 of the *Pactus* represents these issues in a similar way. This time there is no doubt that we are dealing with a common decree of the two kings:

> In order to keep the peace we order that elected hundred be placed in fellowship (*in trustis*) whose faithfulness and diligence will guarantee the keeping of the abovesaid peace. And because by God's grace brotherly love assures an unbreakable bond between us, the hundred or those said to be in fellowship (*in trustis*) shall have the right cross the joint borders of district communities to pursue thieves or follow their tracks; and let on the fellows who fail their task fall the responsibility to hasten to make full restitution to the victim, but let them continue to pursue the culprit. If he [the thief] has been found by someone of the fellowship (*in trustis*), let it take for itself half the composition, and the loss suffered by the injured party is to be covered from the property of the thief. If he [the injured party] follows and catches the thief himself he shall receive a full composition and payment for whatever he has lost; nevertheless the public fine (*fredus*) shall be reserved for the judge in whose district the thief resides.[367]

The *centena* (hundred) shows its double face here. It is the group, a collective subject that at its own expense offsets the loss incurred by the injured, hunts and tracks the criminal collectively, and when he is caught, takes half of the composition for the theft or robbery. At the same time, however, the *centena* is a territorial unit, a district that has its borders. If the runaway crosses them and hides in the neighboring *centena*, then it transfers the obligation to take up the "track" and the material responsibility for the loss caused by the offender to the second or third *centena*. In the end, it was the *centena* which lost the "track" that had to pay.

Chapter 16 of the *Pactus* says the same thing that is said in chapter 9, but in different words. It speaks of the transfer of collective material responsibility to the *trusti*s that did not fulfill their obligations in terms of the protection of peace: "and let on the fellows who fail their task fall the responsibility to hasten to make full restitution to the victim (*et in truste, qua defecerit, sicut dictum est, causa remaneat, ita ut continuo capitalem ei, qui perdiderat, reformare festinet*). We read in chapter nine, in turn, that the victim must inevitably receive the equivalent of the loss incurred from the *centena* that lost the track of the offender (*capitale tamen, qui perdiderat, a centena illa accipiat absque dubio, hoc est de secunda vel*

367 *Pactus pro tenore pacis*, chapter 9 (= PLS, title LXXXIV and XCI–XCII).

tertia). There is no doubt that the editor of the *Pactus* used the words *centena* and *trustis* interchangeably considering them in this case to be equivalent.

Claudius von Schwerin treated the clear hint from the source with disbelief and was inclined to see in the term *trustis* a group of the members of the hunt rather than the entire population of the free inhabitants of the *centena*. Franz Steinbach has argued that the term *centena* used in the *Pactus* means a special police formation under the command of a hundredman that Childebert and Chlothar had only then just brought into being.[368] What lies at the foundation of these statements is not so much the information provided by the sources, but rather suggestions related to the term *trustis*. Scholars most often associate the notion of the *trustis* with a military formation, with the king's bodyguard troop or a group of warriors who remained in a special kind of relation with the ruler (*antrustiones*).

As a result of those associations, it is easy to forget the ambiguity of the terms *trustis* and *antrustio*. Ruth Schmidt-Wiegand observes that these were Latinized forms of the Frankish words *druht* and *druhtin*,[369] in which the Slavic reader will no doubt hear undertones of the Slavic words *druh*, *drug* and *drużyna* or *družina*. They share not only their Indo-European origin and similar pronunciation, but also a very similar spectrum of meanings. And they were by no means limited to military issues. Title XIII, paragraph 14 of the Salic law stipulates a penalty of 200 solidi for abducting and raping a betrothed who was being taken by the wedding procession to her husband-to-be (*puella sponsata* ***ducte ducente*** *ad maritum* [emphasis mine – K.M.]). In this case, *druht* refers to the groomsmen rather than a military troop. *The Life of Constantine* uses the name *družina* to refer to those who accompanied the saint's mission.[370] These examples illustrate well the ambiguity of the term *trustis*, although sources from the Germanic and Slavic regions most often use it to refer to the antrustions, that is, the warriors and advisors of the ruler. What merits special attention, however, is article 5 of the *Vast Russkaya Pravda*. The word *družina* appears there in a meaning identical to the *trustis* from chapter 16 of the Frankish *Pactus* about keeping the peace.

In both the *Short* and the *Vast* editions of *Russkaya Pravda* the territorial community of neighbors is referred to as a *verv'*. The community was burdened with collective responsibility for murders committed by criminals who were not found.

368 von Schwerin, "Hundertschaft," pp. 121 ff.; Steinbach, "Hundertschar," p. 130f.

369 Schmidt-Wiegand, "Fränkish druht."

370 ŻK, IX, p. 33: the Hungarians attacked Constantine and his companions but: *uslyšavše učitelna słovesa ot ust ego, otpustiša i s vseju družinoju* (having heard the learned words from his mouth, they refrained from [harming] his fellows).

In such situations the *verv'* on the territory on which the corpse was found (*v č'jej že vervi golova ležit*) had to pay at its expense the so-called "*dikaia vira*" (dark bloodwite). Such penalty was paid in installments because the community paid it on its own, with no contribution from the culprit (*zane že bez golovnika im platiti*). What was peculiar about the Old Russian law was that the group had to pay the penalty even when the killer was known, but was its member. According to *Russkaya Pravda*, "If the *golovnik* [the murderer – K.M] is in their *verv'*, then since [in other cases] he contributes to them [their payments – K. M.] for this reason they should also help him and pay the *dikaia vira*, but must pay collectively [only] 40 *grivna* while *golovnitchestvo* must be paid by the culprit himself. Apart from this, he should also contribute his share to the 40 *grivna* paid by the *družyna*" (*Budet li golovnik ich v vervi, togo zane k nim prikladyvajut', togo dela pomagati im golovniku, li v dikuju vinu; no splatiti im voobči 40 griven, a golovnic'stvo a to samomu golovniku; a v soroci griven zaplatiti emu iz družyny svoju čast'*).[371]

The word *družyna* refers here to all cooperating inhabitants of the *verv'*, and is anyway, in accord with the etymology of the word. The *družyna* is a group of "*druhs*" linked by their common activities, responsibilities, and dues. The entire *verv'* is a *družyna*; the entire *centena* is a *trustis*. The obligation to take up the track was imposed on all members of the community, and even if only some were summoned to join the hunt, the entire community was materially responsible if the hunt failed. This is how Childebert I and Chlothar I formulated the principle of collective responsibility in the middle of the 6th century. It was formulated in exactly the same way in Childebert II's *Decretio* of 596.[372]

The kingdom of the Franks was no exception in this respect. The obligation to take up the "track" was also imposed on the Anglo-Saxon hundreds that are represented in a codification from the middle of the 10th century as local assembly communities as well.[373] We could, perhaps, suspect that the Anglo-Saxon kings followed the Carolingian or Merovingian institutions, but in the case of the Old Russian *verv'*, the adoption of the Frankish model is obviously out of the question. The *opole* communities in Poland under the Piast dynasty were also burdened with collective criminal responsibility for crimes committed by undiscovered offenders and with the obligation to track, apprehend, and denounce the criminals. This does not seem to be based on western models.

371 PrP, articles 3, 4 and 5.

372 PLS, Capitulary VIII, chapters 3, 4 and 5.

373 *Hundredgemot*, Liebermann, GA, vol. I, pp. 192–194.

The royal powers in many countries of barbarian Europe apparently made the local communities perform police functions under pain of collective responsibility. The Merovingian *Pactus pro tenore pacis* was, however, the oldest regulation concerning this issue, not only in terms of chronology. The Anglo-Saxon *Hundredgemot*, *Russkaya Pravda* and the documents of the Piast dukes testify to a legal status quo that had already existed for some time. *Pactus pro tenore pacis* introduces this status through an act of royal command. It imposes specific obligations on the *centena* with respect to the protection of the peace, and with the explicit intention of enforcing an efficient realization of those obligations, burdens the *centena* with collective material responsibility for any losses caused by undiscovered offenders. What proves that we are dealing here with a new norm and not a confirmation of an older custom are the phrase *centenas fieri* and specifically the order to appoint in the local communities (*in truste*) chosen *centenarii* so that they oversee "the protection of the abovementioned peace" (*per quorum fidem et solicitudinem pax predicta servatur*). This was meant to prepare the *centenas* organizationally for the fulfillment of the new functions.

This does not mean that the institution of the *centena* itself was a new creation that was newly brought into being by royal decree.[374] Such an interpretation of the phrase *centenas fieri* similarly to the Old Testament *fiat lux* credits the Merovingian kings, Clovis I's sons, with attributes of divine omnipotence, which in my view exceeds all limits of probability. In his search for a more realistic interpretation, Fritz Wernli draws on title XXXVI of the law of the Alemanni where the words *fiat conventus* (or *fiat placitum*) *in omni centena* are used to mean judicial assemblies taking place in each *centena* district.[375] In the *Pactus* for the protection of the peace nothing is said, however, about the assembly. In my view, the words *centena fieri* mean exactly what is explained in detail immediately following these words: that collective material responsibility for losses caused by theft if the offender is not caught must be imposed on the *centenas*. What was novel here was not the institution itself but the obligations imposed upon it, or more precisely, the manner of exacting those obligations.

What we also encounter in chapter 16 is an institutional novelty: the order to appoint the *centenarii*. We know from titles XLIV and XLVI of the Salic law that the *centenari* had previously existed, and that they either were equivalent to the *thunginus* or were their deputies in the local assembly communities. Yet, apparently they did not exist everywhere. Childebert I and Chlothar I decided not only

374 This is what Steinbach ("Hundertschar," p. 131) and Mayer ("Staat," p. 117) have argued.

375 Wernli, *Die Gemeinfreien*, note 4, p. 63.

to burden the *centenari* with the responsibility of overseeing that the *centenas* carried out their policing and peace-keeping tasks but also of establishing them in the Frankish communities in which they had not previously existed. This most probably concerned the territories of mixed Frankish and Roman settlement.

What may also have been an issue was the gradual restriction and supplanting of the *thunginus* as a representative of the archaic tribal order. We find them only in the Salic law. The absence of the *thunginus* in Childebert I and Chlothar I's *Pactus* indicates that the rulers did not see any place for the *thunginus* in the new system of keeping the peace. In the long run, the leadership of the assembly communities of the free Franks could not remain in the hands of people who were not royal officials and would not be incorporated into the administrative hierarchy of the state. The absence of the *thunginus* in the Ripuarian law is in this matter sufficient *ex silentio* proof: "If anyone needs witnesses [to be present] at court before the *centenarius* or count, or before the duke, patrician or king in order that they give testimony…" (*Si quis testis ad mallo ante centenario vel comite, seu ante duce, patricio vel regi necesse habuerit…*).[376] It names and hierarchically orders all those who held offices: from the *centenarius* to the king himself. The *thunginus* was eliminated while the *centenarius* was included into the hierarchy of the offices. The role of the *centenarius's* immediate superior who could, like the *centenarius*, preside over the *malloberg* was given to the *comes*.

The Latin word *comes* refers to the Germanic *grafio*, yet in the first half of the 7th century, when the Ripuarian law was being recorded, he already was an official with more extensive competences and of a much higher position than the tax collector described as *grafio* in the Salic law. The *comes* was no doubt modeled on the Gallo-Roman *comes civitatis*.[377] It is telling, however, that Clovis I's followers, when organizing the territorial administration on the Germanic territories of the Frankish state according to this model, entrusted the modest counts with the functions of the *comes* and not the *thunginus*, whom they had eliminated completely, or the *centenarius*, whom they did allow to head the local communities but only serving as officials under the supervision of the *comites*.

All this does not mean that the *comes* simply replaced the *thunginus*. In accordance with the intentions of the kings who were primarily interested in transforming the traditional order, the *comes* played a fundamentally different role. There are no reasons to suppose that at first the *thunginus* and then the *comes* after him acted within the same territorial unit. The sources do not provide any direct hints about

376 LRib, title L, 1.

377 For the transformation of the early Frankish *grafio* into the *comes*, and for the late Roman *comites civitatum*, see Schulze, *Grafschaftsverfassung*, pp. 35–40.

the number of old Frankish *mallobergs* or about the territorial scope of the particular communities. Their territory was most probably demarcated by structures of settlement and natural landscape, but they were rather small units. Titles XLIV and XLVI of the Salic law allow us to guess that the *centena* and the *mallus* were situated within the same territorial confines and represented two organizational aspects of the same community. Title L of the Ripuarian law indicates explicitly that the *centenarius* was in the 7th century at the head of the local court that apparently comprised the territory of the *centena*. The *comes's* sphere of activity included at least a few such territories.

In light of the oldest Frankish sources, *centenarius* and *centena* seem, like the *thunginus*, to be institutions of the traditional tribal order. After the capture of Gaul, royal power found itself in a new situation and it made an effort to transform the political system on the territories of the Germanic state. The organization of the *centena* that in the old times possibly had performed military functions proved to be an indispensible instrument with which to maintain public order under the new conditions. The monarchy subjected the customary self-defense of the local community to new tasks, enforcing their realization under the pain of collective responsibility. Moreover, it eliminated the *thunginus*, introduced the office of the *comes*, and subjected the *centenarii* to its authority. In the edicts of the 6th century, the *centena* appears mostly as a community of the common peace, but when we look at the Salic and Ripuarian laws we see that it was also simultaneously a community of the assembly and the court. This can be seen most clearly in the unambiguously formulated laws of the Alemanni.

Between 536 and 537, the Alemanni came to be subjected to the kingdom of the Franks. This was not, precisely speaking, an incorporation, but the duke of the Alemanni was now a subject of the Frankish king. *Lex Alamannorum*, recorded in the third decade of the 8th century, undoubtedly betrays the Frankish influence. Even the style of this codification resembles at times the capitularies formulated in the imperative mode as acts of royal will. This is how title XXXVI, devoted to jurisdiction and judicial districts, was drawn up:

1. The court shall take place according to ancient custom in every hundred (*centena*) in the presence of the count (*comes*) or his delegate (*missus*) and in the presence of the hundredman (*centenarius*). The judicial assembly should take place every Saturday or on such a day as the count or hundredman wishes, that is, once a week when peace is scarce in the province (*quando pax parva est in provincia*). However, when times are better, the assembly should take place every two weeks in every hundred, as we said above.
2. And if anyone wishes to summon another for any dispute whatever, he ought to summon him publicly before his [the accused's] judge (*in ipso mallo publico debet mallare*

ante iudice suo) so the judge may restrain him according to law, and let him [the accused] rightfully respond [to the charges] of his neighbor, or of any other one who wishes to summon him. First, let him present his dispute before the assembly. Second, if he wishes to swear, let him swear according to the established law.

3. And in the first meeting of the assembly, let him indicate oathtakers and give witness as the law requires, *and let him give his pledge to the count himself or to that hundredman who is presiding* [emphasis mine – K.M.], so that he may swear lawfully on the established day. If he is liable, let him compensate […].
4. If any freeman, however, refuses to come to that assembly or does not present himself to the count, the hundredman, or the representative of the count in the assembly, let him be liable for twelve solidi. Let no person whatever refuse to come to the assembly, neither a vassal of the duke or of the count nor any person whatever, no one can evade attending this assembly, so that in the assembly the poor may present their cases. […].
5. And if there is such a person whom the count, the hundredman, or the representative of the count cannot restrain in the assembly, then let the duke restrain him lawfully. Seek to please God rather than man, so that no negligence may be found in the duke's soul by God.

Let us begin by stating the obvious. The *centena* is here a judicial district, a community of the assembly comprising all those living on the territory of the free Alemanni – from the ordinary poor people (*pauperes*) to the influential vassals of the king or a *comes*. It would not be worthwhile repeating what is written in black and white had it not been for Heinrich Dannenbauer's view, until recently enjoying wide recognition, according to which the *centenas* were not territorial districts but military colonies of settlers inhabiting royal property.[378]

What is also obvious in light of title XXXVI of the law of the Alemanni is that the *centenarius* played a judge's role in his *centena*. He presided over the judicial assembly, took deposit from the accused, and settled the case unless the accused was someone so powerful that he could be judged only by the duke. Yet there was a *comes* above the *centenarius*. He held superior judicial authority in two ways; he either personally attended the *centena's* assembly and played first fiddle there, although he acted alongside the local *centenarius* (then the judicial assembly took place as *coram comite et coram centenario*); or he sent his representative there, so that through the agency of that representative he oversaw the judicial

378 Dannenbauer, "Hundertschaft;" and Mayer, "Staat," especially p. 120 where he leaves out (the uncomfortable) title XXXVI of the law of the Alemanni; see also Borgolte, *Grafschaften Allemaniens*, p. 119. See also Schulze for a thorough critique of this theory (*Grafschaftsverfassung*, pp. 92 ff. and 319 ff.), as well as Wernli's polemic, sometimes violent in form but nonetheless noteworthy, *Die Gemeinfreien*, pp. 44–72.

assembly presided over by the *centenarius*. What seems to follow from the text of paragraph 3 is that a judicial assembly could be presided over by either a *comes* or a *centenarius* (*wadium suum donet ad ipsum comite vel illo centenario qui preest*). In paragraph 5, the possibility was implicitly assumed that cases could be settled by the *comes's* envoy (*si est talis persona quod comes ad placitum vel centenarius vel missus comitis distringere non potest*), although we do not know under what circumstances such a situation would take place. The *comes* and the *centenarius* were the leading characters here. It seems, however, that there always was some superior authority at the *centena* assembly, whether it was the *comes* himself or his envoy.

Was thus the Alemannic *centenarius* the *comes's* deputy, and the *centena* a subdistrict of the county (*comitatus*)? This is how the later Carolingian capitularies represented the pattern of territorial management in the state of the Franks. In relation to the law of the Alemanni, however, more careful words are required. Title XXXVI standardized the territorial judiciary in a systematic and exhaustive way. This is why the absence of any mention about a *comes's* assembly is so telling. The *placitum* or the *mallus* always took place in some *centena*. The assembly over which the *comes* could preside and at which he could personally judge was a gathering of the inhabitants of the *centena* and not of the county. It can, of course, be said that the county was divided into *centenas*, but these words do not quite match the picture we can find in the norms of the law of the Alemanni. The reverse order of this description is more in line with the situation: the *comitatus* was a cluster of *centenas* bound by the authority of the same *comes*. This is how, by reference to the *comes* rather than to the capital of the district, the territory of the county was frequently described: *in ministerio Frumoldi comitis* (i.e., on the territory where *comes* Frumold held office), *in ministerio Rihwini comitis, in ministerio Odalrici comitis, in comitatu Chazonis comitis, in comitatu Ruadolti,* or, finally, *in pago Turgauve, videlicet comitatu Adelhelmi*.[379]

Such arrangement of relations between the county and the *centena* proves that the *centena* was an institution older than the county. No one created the *centenas* as organs of the *comes's* authority. On the contrary, among the Alemanni, similarly to the Franks, the *comes's* authority was a cap placed on the long-standing structure of local communities with the *centenarius* at its head. In the duchy of the Alemanni, the *comes* offices were introduced according to the Frankish model.

379 I have drawn these examples from Louis the Pius's and Louis the German's documents concerning Alemannia: USG, vol. I, no. 226, 817; USG, vol. II, no. 433, 854; ThUB, no. 96, 858.

Perhaps it even was a novelty imposed by the Merovingian rulers. Nothing suggests, however, that the *centena* organization of the local communities was also borrowed from the Franks. The state could impose some obligations on those communities, but no state authority had sufficient power to shape these clusters of settlement and create neighborhood structures. In the law of the Alemanni the *centena* seems precisely a community of a neighborly character.

Let us note that paragraph 2 from title XXXVI emphasizes the territorial character of the court. A man who wants to accuse another should report it to a judge (the judge of the accused) at the public assembly (*in mallo puplico debet mallare ante iudice suo*). It thus refers to the assembly of the *centena*. The law of the Alemanni does not know any other judicial assemblies. The accused had to attend them because, according to title XXXVI, paragraph 4, participation in the assembly of one's home *centena* was a general duty, while failure to appear was punished with a penalty of 12 solidi. The obligation to attend the assembly and the punishment for the failure to do so were justified by the need to enable ordinary people to lodge complaints and make accusations (*ut in ipso placito pauperi conclamant causas suas*).

The *centena's* assembly was a place where all its inhabitants gathered, and so a man who had been harmed by any one of them knew that he would find him there, and that he could publicly accuse him. If both the accuser and the accused were from the same *centena*, they would meet anyway at the assembly as usual every week or every other week. If the accuser was from a different place, he had to attend the assembly of the *centena* to which the culprit belonged in order to find him there and publicly, before the judge and the gathered inhabitants, make an accusation. This is the meaning of the words *mallare ante iudice suo*, and this is how, in my view, we should understand the words that that judge "should judge him according to the law." The accused, in turn, should "rightfully respond [to the charges] of **his neighbor, or of any other one** who wishes to summon him" (*ut ille iudex eum distringat secundum legem, et cum iustitia respondeat vicino suo aut qualescumque persona eum mallare voluerit*).

The person who made an accusation at the *centena* assembly against one of its inhabitants could be "a neighbor" or someone "who wishes to summon him." This difference was specified for a reason. It had to be meaningful in how the court and the assembly operated. The question most probably was whether both the accuser and the accused were from the same *centena*, or whether the accuser was an outsider coming to the local *mallus* in order to find and sue his opponent there. If so, then the notion of "neighbors" (*vicini*) included all the inhabitants of the *centena*. The editor of the law of the Alemanni wrote it down without thinking, as if it were an obvious thing. In his eyes, the *centena* was both a collectivity

of neighbors and a territorial community of the court and the assembly. The shaping of the communities of territorial neighborhoods could not be a product of any superior authority, whether Frankish or native. The Franks could only pursue establishing the institution of the *comes* over these communities as representatives of the ducal and royal authority.

In Saxony, the local communities were not called *centenas* (*centenae, huntari*) but simply districts. The sources describe a community as a *pagus*, that is, a Latin equivalent of the Saxon word *go*. Sometimes the word was also written in the native version when it was an element of a local name referring to the territory of the district (e.g., *pagus Sudergo*, where Folcbert, St. Lebuin's friend, lived). The proper names of several such districts were noted down in the accounts of military operations or negotiations connected with the conquest of Saxony in the annals. *Pagus qui dicitur Bucki*, located on the tribal territory of the Angrivarii, was mentioned in the royal Annals of the Frankish Kingdom because it was there that the elders of the Angrivarii met with Charles the Great in 775. In similar circumstances, *pagus qui dicitur Dragini* and *pagus Waizzagawi* were mentioned in 784 on the territory of the Westphalians, as well as *pagus Hriustri* on the Weser in 793.[380] What these mentions suggest is that the *pagus* was a territorial unit of a lower order within these particular tribes – the Angrivarii, the Westphalians, and the Eastphalians.

We can learn something about the political role of these units from two independent sources. The older, *Life of Lebuin*, tells us that representations of the edelings, frilings and *laeti* from each district and under the leadership of a chief gathered at the annual assembly of the Saxons at Marklo on the Weser (*solebant ibi omnes in unum satrapae convenire, ex pagis quoque singulis duodecim electi nobiles totidemaque liberi totidemaque lati*) in order to "[confirm] the laws," judge particularly difficult cases, and decide about peace and war.[381] It is true that Charles the Great forbade the Saxons to hold such assemblies, but when in 797 he himself summoned the representatives of the three conquered Saxon tribes to Aachen in order to issue the Capitulary, he saw it fit to bow to their tribal tradition. It was written in the Capitulary that besides the bishops, abbots, and *comites*, "the Saxons from various districts (*pagi*) [of the territories] of Westphalians and Angrivarians as well as the Ostphalians" (*simulque congregatis Saxonibus de diversis pagis tam de Westfalahis et Angariis, quam et de Ostfalahis*) also took part in the assembly and expressed unanimous approval of the norms pronounced.

380 VLA, chapter 3, p. 792; ARF, pp. 42, 68 and 93.

381 VLA, chapter 4, p. 793.

This is telling; the solemn promulgation drew attention to the fact that the assembly summoned by the king of the Franks fulfilled the condition of representation obtaining in the old trans-tribal assemblies. In Aachen, as earlier in Marklo, the meeting was attended by representatives of many local districts and not only the *comites* appointed by the Frankish authority.

The attempt to introduce the *comes* administration on the Saxon territories incorporated into the Frankish state met with difficulties that Charles the Great may not have initially foreseen. In 782, he appointed *comites* chosen from amongst the highest Saxons, or as the *Annales Maximiani* tell us, the Frankish and Saxon aristocracy. In *Capitulatio de partibus Saxoniae* of 785, the king decided, in relation to the ban on tribal meetings, that "each of the counts is to hold courts and to administer justice in his area of jurisdiction" (*… sed unusquisque comes in suo ministerio placita et iustitias faciat*).[382]

This was too ambitious a program. After the victories in battle, after the massacre of the Saxon prisoners-of-war in Werden, and especially after Widukind's capitulation and baptism in 785, Charles the Great had believed that he could carry out whatever he wished in the conquered land. But the spears that were sufficient to secure military victory were not fit for the task of instituting a new system of rule. By 797, Charles the Great already knew that 12 years earlier he had looked before he leapt. Now he understood that his reach was still too short to effectively administer the conquered land. He was forced to take this reality into consideration, and, where it was not possible to control everyday life and to enforce obedience with the help of his own people, he realized he would have to rely on the functioning of the local Saxon communities according to their old legal tradition.

Chapter 4 of the 797 Capitulary specified in detail and exhaustively who could hold and supervise authority over the judiciary and, consequently, collect court fees. There is no mention of the *comites*. Four possibilities were considered. The first was when a conflict was settled within the district in a situation when the neighbors of the accused resolved the dispute (*causa infra patriam cum propriis vicinantibus pacificata fuerit*). Then, "they [the inhabitants of the district] are to receive twelve solidi as a fine, in the usual fashion, and are to be allowed this also for the verdict (*wargida*) which they will have made in accordance with their customary practice" (*ibi solito more ipsi pagenses solidos XII pro districtione recipiant et pro wargida quae iuxta consuetudinem eorum solebant facere hoc concessum habeant*).

382 *Annales Mosellani*, MGH ss., vol. XVI, p. 497; *Chron. Moissacsense*, MGH ss., vol. I, p. 297; *Annales Maximiani*, MGH ss., vol. XIII, p. 21; CPS, chapter 34.

The second possibility included in the *Capitulare Saxoniocum* entailed a situation when the case was settled by the group of neighbors, but in the presence of a royal envoy. Then "the inhabitants of the district are to be allowed the above-noted twelve *solidi* for the above-said condemnation, but the royal *missus*, because he has been troubled with the matter, is to receive the other twelve *solidi* for the king" (*si autem in praesentia missorum regalium causae definitae fuerint, pro iam dicta wargida suprascriptos solidos XII ipsi pagenses habeant concessos et pro hoc quia missus regalis ex hac re fatigatus fuerit, alios XII solidos inde recipiat ad partem regis*).

The third potential case involved bringing a case (possibly too difficult to be settled by a local community) directly to the court of the king of the Franks: "if the case is brought to the palace for settlement in the king's presence, then both amounts of twelve *solidi*, namely, that for the condemnation and what is owed as composition to the neighbors (*vicini*), making twenty-four *solidi*, are to be paid in composition to the king on the grounds that the case has not been settled within the district" (*si autem ipsa causa ad palatium in praesentia regis ad definiendum fuerit producta, tunc utrique solidi XII id est pro wargida et quod vicinis debuit conpondere, eo quod infra patriam diffinita ratio non fuerit, ad partem regis faciant conponere, quod sunt solidi XXIIII*).

In the case of the fourth and last possibility, when the accused, who had been tried by his local community, appealed against the verdict to the king: "Now, if there is anyone who refuses to reconcile himself to the judgement made by his fellow neighbors in the district and comes to the royal palace in connection with the matter and is there given the judgement that they have made a just judgement: on the first occasion he is to pay twenty-four *solidi* to the king in composition, as was said above; and if, when he goes away from there, he then refuses to be reconciled and do justice and is again summoned to the palace on account of this matter and condemned, he is to pay twice twenty-four *solidi* in composition" (*nam si fuerit aliquis qui in patria iuxta quod sui convicini iudicaverint seque pacificare noluerit et ad palatium pro huius rei causa venerit et ibi ei fuerit iudicatum quod iustum iudicium iudicassent, in prima vice ut supra dictum est solidos XXIIII ad partem regis conponat; et si tunc inde rediens se pacificare et iustitiam facere renuerit et iterum pro ipsa causa ad palatium fuerit convocatus et deiudicatus, bis XXIIII solidos conponat*). If this did not prove effective, then the payment to the king grew to 72 solidi.

Let us take a closer look at the group described here as *ipsi pagenses*. Charles the Great acknowledged its right to judge, but did not consider it an organ of royal power. Chapter 4 of the Capitulary did not specify the manner in which that group wielded judicial power. He did not concern himself with the details. He

only stated that *ipsi pagenses* were to act as they always had, in accordance with their old custom (*solito more, quae iuxta consuetudinem eorum solebant facere*). Their procedures were regulated by the legal tradition of the Saxon tribes. The king of the Franks had nothing to do with it. Therefore, we do not learn from his Capitulary who presided over the court or who formulated the verdict. Fortunately, chapter 8, devoted to repression against those who had no respect for the courts, lifts the curtain a bit.

In order to "tame" a rebel who did not accept the verdict of the local court (*si talis fuerit rebellis qui iustitam facere noluerit*), and who did not turn up when summoned for this reason to the court of the king himself, Charles the Great allowed the local community to use coercion "according to their old [Saxon] law" (*secundum eorum ewa*). In such a case, the inhabitants of that district had to gather at a general assembly (*condicto commune placito simul ipsi pagenses veniant*) and come to a unanimous decision on the strength of which they were allowed to burn the house of the culprit. This was paramount to depriving the offender of a place among the people, which effectively meant he was an exile and an outlaw. The editor of the Capitulary strongly emphasized that the procedure was in accordance with the ancient law and with the decision of the local assembly, and at the same time, that the king of the Franks accepted it by way of exception and only in relation to those who did not respect his judicial authority (*tunc de ipso placito commune consilio facto secudnum eorum ewa fiat peractum et non pro qualibet iracundia aut malivola intentione, nisi pro districtione nostra*).

These words reveal a disarming confession. In the conquered country, the victorious king had no administrative instruments of coercion by means of which he could impose on others respect for himself as embodiment of the highest judicial authority. It would have been difficult, after all, to send a penal expedition after every troublemaker. Realizing his own helplessness in this respect, Charles the Great consented to having obedience to his jurisdiction enforced by the local Saxon communities in the ways they had been practicing for ages. A temporary withdrawal from the premature attempt to impose the *comes* jurisdiction found its reflection in the 797 Capitulary. For scholars, this is a unique opportunity to seize the still rotating wheels of tribal justice.

The term *ipsi pagenses* used in the 797 *Capitulary* refers to the lowest level of the judiciary in the structure of the tribal community. The Frankish conquerors had already destroyed or were still destroying the higher levels of that organization, but in the local communities the traditional status quo functioned in the old ways and could even constitute a form of support for the new authorities. In light of chapter 8 of the *Saxon Capitulary*, there is no doubt that the judiciary was of the assembly character in those communities. While this chapter concerns

acts of repression and the words *iudicium* and *wargida* do not appear, the act of burning the culprit's house took place on the strength of a decision that *ipsi pagenses* had made unanimously at an assembly summoned expressly for this occasion (*condicto commune placito*). The decision taken in accordance with the established procedure meant a draconian yet legitimate punishment for the offender. What else would it be if not a court verdict? There is no reason to doubt that *ipsi pagenses* adjudicated and passed verdicts in all the cases mentioned in chapter 4 of the *Capitulary* in a similar manner – at the assembly and with a unanimous decision of all the gathered people.

Pagenses thus constituted a communities of the assembly and of the court. Each inhabitant had to know where his assembly took place. Each such community had its own, traditionally established meeting place and composition. It was thus not only a group, but also a territorial unit, a district (*pagus*). The promulgation to the same *Capitulary* mentions such districts when the legislator speaks of the presence and unanimous acceptance of the pronounced norms by the Saxons who came to Aachen *de diversis pagis*. Chapter 4 of the 797 *Capitulary* allows us to develop a certain view on the character and territorial scope of those districts. *Pagenses* – the inhabitants of the district – are also described in this Chapter in other terms that the editor of the *Capitulary* considered to be equivalent: *vicinantes* (those living in the neighborhood), *vicini* (neighbors), *convicini* (co-neighbors). These are all evidently the same people. We first read that the case was settled by *vicinantes*, and then that *ipsi pagenses* took a court fee for this, and further, that this was a fee the defendant had to pay to the neighbors (*vicinis*), and finally, that he could appeal against his co-neighbors' verdict to the king (*quod sui convicini indicaverunt*). *Pagus* was a district in which all the inhabitants were each other's neighbors. Charles the Great's *Saxon Capitulary* allows us to state unambiguously what a brief mention in title XXXVI, paragraph 2, of the law of the Alemanni also suggests; in both sources the local community of the assembly and of the court bore the traits of a territorial and neighborly community.

Therefore, these had to be territorial units much smaller than a county. In the case of the Alemannic *centena*, this was written in black and white in the source text; in *Lex Alamannorum*, the *comes* is a superior appointed over at least a few *centenas*. The *comes* is absent in the *Saxon Capitulary*. Court cases are divided there into those settled in the land (*in patria*) or at the palace of the Frankish king. In the first case, "the inhabitants of the district themselves" (*ipsi pagenses*) adjudicated, passed verdicts, and collected court fees, while the possible presence of the royal envoy only enhanced the solemnity of their verdict. If *ipsi pagenses* did not in the end settle the case, then no one else could do so "in their country" (*in patria*). Trial at the Frankish king's palace, before the king himself, was the

only option left. There is no role in either case for the *comes's* jurisdiction. Nor was anything said about any income earned by the *comes* deriving from the judiciary. At the local level, or *in patria*, the court and verdict fees were collected entirely by *ipsi pagenses*. If a royal envoy came to them, he was entitled to an additional payment for the trouble he took. Yet the *missus regis* collected it for the royal treasury (*ad partem regis*) and not for the *comes*. For cases tried *in palatio* before the king, the fee was obviously paid *ad partem regis*. If the *comes* participated in exercising local jurisdiction – as was the case, for instance, in Alemannia where he could personally preside over the court assembly of the *centena* or send his delegate – he would also have had to have been entitled to a profit from the court fees. The *Capitulary* would not have been silent about the *comes's* income if it was so meticulous about specifying the incomes of the neighbors, the royal envoy, and the king himself. In this case, the silence of the source offers proof: in 797 Saxony there was no *comes* judiciary.

This does not mean, however, that there were no *comites* in Saxony, as H. K. Schulze notes.[383] Indeed, there is no doubt that in 782 Charles the Great appointed *comites* and entrusted them with military command functions, and that in 785 he wanted to subject the local judiciary to them. But that last intention was not realized. In Saxony, the *comes* had been a figure previously unknown and apparently did not come to be recognized by the local assembly communities as head of the court. He could even have been an influential Saxon edeling, but in the new role he was assigned by the Frankish conquerors he stood no chance. He lacked instruments of coercion and was not anchored within the legal tradition, both attributes necessary to secure a hearing at the court assembly. In the face of failure, Charles the Great proved a realist. He gave up on forcing *comes* jurisdiction, and made do with the local Saxon communities that accepted the king of the Franks as the disposer of the superior judiciary that had been previously exercised by tribal assemblies and the annual assembly of the Saxons at Marklo.

Because of the territorial and neighborly character of the community and its judicial functions, the *placitum pagensium* of the *Saxon Capitulary* was an equivalent to the assembly (*placitum, conventus, mallus*) of the Alemannic *centena*. Unfortunately, we do not know what term was used to refer to the man who would preside over such an assembly in Saxony at the time. He certainly was not called a *hunto*, that is, *centenarius*, if the community itself headed by that man was in Saxony called a district community (*pagus*, *go*) and not a *centena* district (*huntari, centena*). It seems, however, that the *centena* system of duties imposed on local

383 Schulze, *Grafschaftsverfassung*, pp. 278–280 and 290f.

communities was also known in Saxony. What suggests this is an order formulated in *Capitulatio de partibus Saxoniae* concerning endowments for the churches then being built in the conquered and Christianized country. The local population (*pagenses ad ecclesiam recurrentes*) had to give to each of those churches two yardlands of arable land and provide at their own expense one male and one female slave for every 120 inhabitants.[384] This was a collective due borne by the community, irrespective of the social differences among the edelings, frilings, and *laeti*, but in respect to their number: 120 people, or more precisely, 120 fathers of families constituted here the unit of measure of the collective due.

This was not, obviously, a system invented by the conquerors in 785, but one that drew on an old custom. The number 120 is not random. This number is also sometimes known as a "great" or "long" hundred. Such arithmetic nomenclature, widespread in the medieval Germanic languages, is amply attested by Scandinavian sources. The word *hundrað* (a hundred) was used to refer to the number 120.[385] If the Franks wished to effectively exact from the local communities the duty of co-funding the church, they had to draw on the traditional way of dividing various obligations that the *pagenses* had earlier fulfilled for the benefit of the community. Yet in 785, the conquerors were under the illusion of their omnipotence, as we can clearly see in *Capitulatio*. It is thus impossible to completely rule out the possibility that they attempted to impose on the conquered peoples a system of dues modeled on the Frankish *centenas*. In any case, the manner by which they burdened the Saxons with the costs of building the church structures could be a clue leading us to an explanation of the relationship between the institution of the *centena* and the number that accompanies it. Paradoxically, a source concerning Saxony, where the terms *huntari* and *centena* did not appear at all, may be the key to this riddle.

It is worthwhile to note yet another paradox – one related to chronology. Charles the Great's *Saxon Capitulary* is two and a half centuries later than *Pactus pro tenore pacis* and a good half century later than *Lex Alamannorum*. In view of the political context, the neighborhood community of the assembly, court, and peace that appears in the *Capitulary* of 797 under the name of *pagus* seems, however, an older sister of the Frankish and Alemannic *centena*. In the face of the failure of the first attempts to impose *comes* jurisdiction on the Saxons, *Capitulare Saxonicum* recognizes and depicts the local communities in the role they had played as part of the political system before statehood. The Frankish *Pactus pro*

384 CPS, chapter 15.

385 Reuter, "Zur Bedeutungsgeschichte."

tenore pacis allows us to capture a moment when the state had already made its first step towards the transformation of the traditional functions of the local communities; royal power turned what had been the long-standing practice of neighborly co-operation for the keeping of the peace into a duty exacted under pain of collective responsibility. *Lex Alamannorum*, in turn, reveals the way in which the local communities of the peace, assembly, and court came to be subjected to *comes* jurisdiction and included into the administrative system of the state. Built into this system, they continued to play a crucial role and for many centuries and kept recurring in the sources when it was necessary for those who wrote and preserved those sources.

Early medieval clerks had a good deal of trouble with the ambiguity of the term *pagus*. They frequently had to search for a way of distinguishing between the county and a subdistrict of the county because usually the subordinate and superordinate territorial unit was described using the same word. The editor of Louis the German's document of 22 July 854 simultaneously handled this problem in two ways; he described the county as *comitatus* and added to it the name of the *comes* in office, and used the term *pagellus* together with the proper name of the place to describe a subdistrict of the county. The diminutive form of the word *pagus* made it abundantly clear that it meant a territorial unit of lower order. A document states that the properties that the St. Gallen abbey gave to the bishopric in Konstanz were located *in comitatu Chazonis comitis, in pagello Swerceshuntare* (five villages), *in comitatu Ruadolti comitis palatii, in pagello Affa* (one village), *in comitatu Odalrici comitis, in pagello Goldines huntari* (one yardland in the village of Herbertingen) and *in comitatu Utonis comitis in pagello Perahtoltespara* (chapel with manorial lands and five peasant yardlands in the village of Baldingen).[386]

The proper names of four small districts appear here, distinct from the names of the particular villages that were located on their territory. Two of those districts had the same element in their name: *huntari*. This was a Germanic term, the Latin equivalent of which was the word *centena*. Heinrich Dannenbauer, with characteristic vehemence, objected to treating these words as synonymous: in his view, *huntari* had as much to do with *centena* as it had with the German word for dog – *Hund* – which sounds nearly identical. But two documents from 838 tell us explicitly that the St. Gallen abbey received some land in the villages of Bettighofen and Ristissen from private donors which were located *in pago Albunesparo in centena Ruadoltohuntre*.[387] The Latin name of the institution (*centena*) means

386 USG, vol. II, no. 433.

387 Dannenbauer, "Hundertscharft," p. 206; USG, vol. I, no. 372 and 373.

in this context, just as *pagellus* does in Louis the German's document of 854, the notion of a district which was part of a larger territorial unit (*comitatus* in 854; *pagus Albunesparo* in 838). The German synonym of the Latin term is repeated in the local name encompassing the territory of the *centena*: *huntre* (*huntari*).

The terminology used in the documents is unstable. The Hattihuntari hundred appears as a *pagus* in the years 776, 789, and 888, while Muntariheshuntari was described in 792 as a *marka*, and in 892 as a *pagus*.[388] In a document of 904, we read that the king gave the St. Gallen abbey some property in three villages located *in pago Munigisingeshuntare in comitatu Arnoldi*. It is obvious that *pagus* refers in this case to a territorial unit which was, alongside other such districts – part of a county. In other documents the term *pagus* referred, however, to the territory of the county so the *centena* district had to be described in a different way. In the widow Cotiniu's document of 844, already discussed earlier in this text, we read that the land she gave to the abbey was located *in pago Durgaugensi* (i.e., in the county of Thurgau), *in situ Waldramnishunderi in loco qui dicitur Cotinuowilare*.[389] In this context, the word *situs* means exactly the same thing that *pagellus* does in Louis the German's document, that is, *pagus Munigisingeshuntare* in the county of Arnold, or *centena Ruadolteshuntre*.

A proper name which contained a form of the word *huntari* was so characteristic that no other Latin term was needed. In two documents, both drawn up on December 28, 852, it was written that the St. Gallen abbey received from private donors some land in the village of Hefenhofen "in the district [i.e., county] of Thurgau [on the territory] of the special name Waldramnishuntari" (*in pago Thurgaugensi, quod tamen specialiter dicitur Waldramnishuntari*). This linguistic element also served as sufficient for the name of a territorial unit in 860: "I give […] what I own in the village of Kesswil in Waldramnishuntari" (*trado* […] *quicquid proprietatis in Chezzinwillare in Waldramneshundare possideo*).[390]

The sources mention eight geographical names on the territory of Alemannia that contain the word *huntari*. These were names of districts and not of particular localities. According to Mayer, eight districts is few. This very modest number of these references testifies, in his view, to a very low presence of territorial *centena*. Yet certainly many hundred districts had other names. By way of example, we

388 Cod. Laur., no. 3243, year 776 (*pagus Hattihuntari*); USG, vol. I, no. 123, year 789 (private gift from the village *in pago Huttihunta*); USG, vol. I, no. 134, year 792 (*infra marcha* […] *Muntariheshuntari villa Pillintkor*); USG, vol. II, no. 684, year 892 (*in pago Munterishuntere in villa Dieteriskiriha*).

389 ThUB, no. 69.

390 USG, vol. II, no. 419 and 420 from year 850 and no. 478 from year 860.

can offer the *centena Eritgaouua* mentioned in Louis the German's document of 839 for the abbey of Reichenau.[391] In this case, the proper name referred to the notion of the district (*gowa, Gau*) and not to the word *huntari*. *Pagellus Affa*, preceded by *pagellus Swerceshuntare* in a document of 854, and followed by *pagellus Goldineshuntari*, was most probably different from these two *centenas* in name alone and not in character.

What seems most authoritative here is the record of a form from St. Gallen: "In the county of N, in Thurgau, in such and such *centena*, in a town called N" (*in comitia N, in Durgeuve, in centuria illa, in loco qui dicitur N.*).[392] The inserted name of the county (Thurgau) indicates that the text was taken from a local document. It was, however, treated as a universal template meant to be used by clerks. In the understanding of the scribe who would use this template for a document, this was how the territorial structure of the Alemanni looked: the county (*comitatus*, *comitia*) consisted of *centena* districts (*centuriae*). This pattern, entirely in line with the norms given in title XXXVI of the law of the Alemanni, must indeed have been widespread. We can thus, with more or less likelihood, identify the districts of Arbongau, Thurgau, and Zurichgau as *centenas* which were part of Thurgau county. The same can be said about the Argenau, Rheinigau, and Schussengau districts that belonged to Linzgau county. The issue is particularly important because it is in relation to Rheinigau that, thanks to specific circumstances, we have source information concerning relations that were certainly not exceptional: the borders of the district determined the territorial extent of the commons shared by neighbors.[393]

The endurance of the Alemannic *centena* districts, especially the relatively frequent references to them in the sources, resulted from the role of the *centenarius* in their judiciary. In title XXXVI of the laws of the Alemanni, he already appears as one of the judges, alongside the *comes* and his envoy. *Lex Alamannorum* was not familiar with the institution of the *rachinburgi*. The person who presided over the judicial assembly of the *centena* also formulated the verdict affirmed by the assembly. The judiciary exercised by the Alemannic *centenarius*, fairly well documented in the sources, aroused considerable interest among the historians of the classical school. Heinrich Glitsch devoted an entire monograph to the figure. After the theory of the *Königsfreie* and Dannenbauer's fanciful conception about the *centenas* as colonies of military settlers inhabiting royal land were refuted, the

391 Mayer, "Staat," p. 102; Wirt. UB, no. 103, p. 117.

392 MGH *Formulae*, p. 435.

393 Schulze, *Grafschaftsverfassung*, pp. 84, 88 and 91; USG, vol. II, no. 680, year 890.

outcome of earlier research partly regained recognition. It is difficult, however, to agree with the opinion voiced rather categorically by Glitsch, and more carefully by von Schwerin and Brunner, that the Alemannic *centenarius* remained "a people's clerk" (*Volksbeamte*) within the medieval state.[394] He was part of the royal administrative system even in the law of the Alemanni, and the ninth-century sources treat him as a substitute of the *comes*, that is, as one of the royal officials. What most strongly testifies to this are the formulas placed by the scribes in the dates of documents until the middle of the 9th century; the names of the *comes* and *centenarius* then in office were given (e.g.: *sub Pabone comite et sub Hunoldo centenario*; or: *sub comite Ruodolfo et centurio Franchoni*).[395]

Apart from those of Alemannic Swabia, documents from the 8th–10th centuries confirm the vitality of the *centena* as a form of the organization of local communities on the territories inhabited by the Franks and the Frisians. In 770, Charles the Great's brother, King Carloman I, confirmed to the royal *comes* Rodwin that he owned "a forest in the locality called Benutzfeld in the *centena* of Belslango in the Ardennes" (*silva aliqua in loco que dicitur Benutzfelt infra centina Belslango infra vasta Ardina*). Louis the Pious decided to return to a certain Gerulf an estate he had earlier confiscated from the man in the village of Cammingahunderi in the Frisian district of Westrach. In this case, the trace of the *centena* organization came to be preserved in the name of the village constructed in the same way as the geographical names of the Alemannic *centena* districts.

We no doubt encounter such a district in an undated traditional note from the abbey of Fulda: "I, Markwart and Uppo bestow on St. Boniface our property that we own in the district of Kilingo-Huntari (*in pago Kilingo-Huntari*) in the village of Merheim: land for 7 oxen and half the land for 1 ox […]."[396] Such a note can be found in the records of gifts on the territory of Frisia. What is noteworthy here is that in the words *centina Belslango, pagellus Swerceshuntare*, or *centena Krecgow* we have the peculiar cluster of Latin words (*centena* and *pagus*) and Germanic elements of the local names (*go*, *gow* and *huntari*), which reveal the link between the *centena* organization and the notion of the territorial unit. This proves that the same model of the organization of local communities existed among the Franks, the Alemanni, and the Frisians.

394 Glitsch, *Der alemannische Zentenar*, p. 153; Brunner-Schwerin, *Deutsche Rechtsgeschichte*, vol. II, p. 234; see also Thomas Mayer's critical comments, "Staat," p. 116.

395 USG, vol. II, nos. 406, 566, 603, 641, 657, 658.

396 UBMittRhein, vol. I, no. 22 (year 770); Boehmer-Muelbacher, Reg. Imp., vol. I, no. 997 (year 839); Tr. Ant. Fuld., III, 80, p. 47f.

This was not, however, a universal Germanic model. C*entena* does not appear either in the written sources or in the geographical names of Bavaria, Thuringia, and Saxony. Since the sources for Saxony are relatively good, albeit chronologically interrupted, regarding the organization of the local communities, the silence of the Saxon and other sources about the *centenas* and *centenarii* can be considered as proof of their non-existence for centuries in those lands. This does not mean, however, that the *centena* was a Frankish institution, the model of which was transplanted to some Germanic countries under the influence of, or pressure from the Franks. Such speculation, as formulated by Mayer,[397] would, after all, be acceptable in relation to Frisia, but in the case of the Swedish Svealand it is well beyond the bounds of probability. The local districts of the assembly and court, described as *haerad* in other regions of Sweden (in Westrogoth and Ostrogoth lands) and also in Norway and Denmark, were in Svealand called exactly the same as the Alemannic *centena*: *hundare.*

What is noteworthy is the far-reaching similarity of the norms concerning the *hundari* in *Uppladslag* and the *herad* in *Westgötalag*. In the matters of disputes about the pasture and forest commons (*almaeninger*), the similarity of the situations, procedures, and even the vocabulary described by the sources is simply striking. *Hundari* and *herad* appear there not only as an arbiter between the villages (*by*), but also as a party, an interested collective subject entitled on the principle of exclusivity to use the *almaeninger* on its own territory. The *herad* or the *hundari* could even be involved in a dispute about the territorial scope of those entitlements with a political unit of higher order, that is, the province (*land*).[398] This is a clear indication that the names *herad* and *hundari* were based on the same foundation: a territorial and neighborhood community. An efficient fulfillment of regulatory, judicial, and military functions was possible because the members of the community were bound through neighborly collaboration in their economic everyday life.

We can see it in the example of the collective responsibility for a murder committed by an unknown criminal. According to *Westgötalag*, if the corpse was lying in the vicinity of buildings but outside the fence (*utaen garzlip*), then the *granni*, that is, the neighbors from the same village (*by*), had to pay collectively a penalty of 9 marks or give up the murderer. If, however, the murder was committed "on the territory of all the Goths" (*a aldra Goetae marku*), that is, on the territory of freely accessible *almenda* (commons), the three nearest villages (*by*) were in turn

397 Mayer, "Staat," p. 102.

398 UpL, V, 20 and WgL, jord thaer bolkar, XVI.

burdened with responsibility. The inhabitants of each *by* could, however, clear themselves of charges through a collective oath. If all three villages did so, then the penalty had to be paid by the entire *herad* at its own collective expense, because "it used to go there in search for firewood" and it grazed its animals there. The territorial scope of the forest commons simultaneously demarcated the realm of collective responsibility which was inextricably linked to the duty of keeping the peace.

An analogous rule obtained in Upland. The *hundare* of the territory on which the body of the victim was found had to find the murderer or pay wergild.[399]

What draws our attention here is the far-reaching similarity of those norms to the content of article 8 of the so-called *Elbinger Book*, the oldest edition of Polish law. Yet in Poland, the order of proceeding was the reverse of that in Westrogoth. The duke first burdened the entire *opole* with criminal responsibility for "the head," and only then could the *opole* accuse an entire village, which in turn accused the family, and the family the individual. Moreover, in Poland it was not through an oath that one could clear oneself of charges but through trial by ordeal: a duel or a trial by hot iron.[400] Neither the *opole* nor the *herad* could defend themselves with an oath or a trial by ordeal. If it was not possible to find the murderer or shift the blame on any of the villages comprising the community, then the entire *herad*, *hundaeri*, or *opole* had to pay the wergild.

In thirteenth-century Sweden, both the *hundari* and the *herad* remained communities of the assembly and the court. Characteristically, they were treated as collective subjects entitled to a part of the income from the court fine. For the crime of breaking into a church and stealing vestments, the offender had to pay 9 marks to that church and another 9 marks to the *herad*. The fine was divided in a similar way for the lawless – that is, not legalized with a court verdict – confiscation of somebody else's property or for pulling down someone else's house; the culprit paid 9 marks to the wronged party, another 9 to the king, and yet another to the *herad*.[401] This reminds us of the formulation from chapter 4 of Charles the Great's *Saxon Capitulary*, where the community of the assembly, "the inhabitants of the district themselves" (*ipsi pagenses*), also appears as a body of the court entitled to a payment for settling the case and passing the verdict.

The sources did not concern themselves with how that payment was divided among the members of the community. We can guess, however, that the person

399 WgL, Af mandrapi, XIV; UpL, M. VIII and M. IX, 3.
400 NZ, art. 8, paragraphs 3–7.
401 WgL, Kirkiubolker, VII and Raetlösabalker, IV.

who presided over the assembly received the largest share. *Westgötalag* describes this person as *haeraðshöfthingi*. It meant literally, "the head of the *herad*" (*höpfi* – "head"), and indeed he was head of the assembly community rather than a royal official. In many respects the *haeraðshöfthingi* resembled the old Frankish *thunginus*; he presided over the assembly but did not himself pass any judgements. He played a crucial role when oaths that cleared someone of charges were sworn. If the murderer found guilty at the assembly did not leave his house and did not move to the forest, but remained among the people, the *haeraðshöfthingi* had to pay 12 marks for failing to keep legal order while the entire *herad* had to pay 40 marks.[402] As can be seen, royal authority treated the head of the *herad* as the most important member of the local community, and not as its own delegate who ruled and adjudicated on behalf of the king. In Upland these power relations looked slightly different; the judges there, called *domarar* (two per each district), who headed the *hundari* administered law personally.[403]

Both of the types of the Old Swedish territorial communities – the *hundare* and *herad* – also performed military functions. They were divided into naval groups (*skleppslag*); each 12 households had the obligation to put up one rower for a sea expedition and to equip him with food and arms. On this basis, some scholars have attempted to calculate precisely the number of inhabitants of each district (understood as one hundred).[404] These attempts must no doubt arouse incredulity on the part of anyone who is aware of the difference between medieval settlements and a neatly trimmed French garden or a perfect Prussian parade. The principle of dividing military obligations in accordance with the number of households is, however, well documented and its relation to the notion of "hundred" contained in the word *hundare* seems very probable, though it certainly did not mean that *hundare* had 100 or a 120 inhabitants. The etymology of both terms describing the territorial community – *hundare* and *herad* – in any case, points to their military function. The former is a combination of the words denoting a hundred (*hund*) and army (*heer*), or troop (*här, shär*). While I wouldn't attribute to the term *herad* any forms related to "hundred," its etymological relation with the words for army or troop seem to not raise any doubt.[405]

The fact that by the Rheine and on the northern coast of the Baltic sea small territorial units were described with the same name – *hundari* – calls for some explanation. Theodore Mayer's far-fetched idea that the Franks borrowed the

402 WgL, Af mandrapi, II, 3.
403 von Schwerin, *Altgermanische Hundertschaft*, p. 197 and 203f.
404 Halfstroem, "Die altschwedischen Hundertschaften," p. 451f. and 456f.
405 von Schwerin, op. cit., p. 201f.; Halfstroem, op. cit., p. 457.

hundred organization from the Roman army and then passed this model and its Germanic name on to remote Sweden[406] does not merit serious discussion. What is more likely is a hypothesis explaining the presence of the term *hundari* at two distant ends of the Germanic world by means of a common Old Germanic genealogy of this institution. The supporters of this hypothesis are inclined to draw on Tacitus.[407] Admittedly, neither in the Germanic world nor even in Sweden itself was the term *hundari* widespread, but what made the Upland *hundare* different from the Westrogothic *herad* was the name rather than a different form of the institution. The similarity between them was obvious for the medieval scribes and glossators. It raises no doubts among scholars, either. Perhaps when comparing the territorial communities of neighbors in barbarian Europe, we should not be overly influenced by differences in terminology.

We most probably are fortunate to have the information from the 797 *Capitulary* about the court assemblies of the territorial communities of neighbors (*placita pagensium*) thanks to the fact that Charles the Great recognized the failure of his administrative projects. As long as it was not possible to introduce *comes* jurisdiction in Saxony, Charles the Great had to rely on the traditional judiciary of the local communities. Charles the Great's initial plans were eventually implemented over the course of the 9th century. During the reign of Louis the Pious and Louis the German, *comes* jurisdiction was in place in the entirety of Saxony. The judicial assemblies of the local communities, the existence of which was revealed by the 797 *Capitulary*, had long disappeared from the sources. It was only in the second half of the 12th century that references to local judicial assemblies termed *goding* or *gogericht* begin to appear in documents. The morphology of these names is clear: *go* – a district, and *ding* (*thing*) – the assembly. *Goding* thus literally means an assembly of the inhabitants of a district. The expression *placitum pagensium* in chapter 8 of the 797 Capitulary was a faithful translation of that Saxon term into Latin. The lexical similarity does not in itself prove that it was the same institution. Research on social history does not, after all, entail browsing through dictionaries. Historians have noted, however, that both the *placitum pagensium* from 797 and the much later *goding* resembled the assemblies of neighbors, and that they were not by any means administrative organs of the state. For this reason, some scholars have considered the *goding* as a continuation of the Saxon judicial institutions from before the Frankish conquest. Others emphasized the functional similarities to the *centena* and saw

406 Mayer, "Staat," p. 116.

407 For example, Sven Tunberg in *Nordisk Tidskrift*, 1945, pp. 95 ff.

the *goding* as the continuation of the lowest level of Carolingian jurisdiction.[408] These views were not completely contradictory, taking into consideration the pre-state, or, at any rate, older than the *comes* judiciary, genealogy of the *centena*. Karl Kroeschell has radically opposed both of these interpretations. In his view, *gogericht* began to function when they appeared in the sources. This was a new, twelfth-century institution linked to the sorting out of the legal order by the so-called *Landfrieden*. The genesis of the hundred judiciary (*Zentgericht*) in Hesse appeared, in Kroeschell's view, the same. Its similarity to the Saxon *goding* is unanimously emphasized by all scholars.[409]

Kroeschell's view did not win approval in the literature. It was pointed out to him that he turns the silence of the sources into a major argument. This charge is not entirely fair. Kroeschell mainly emphasized that the *gogericht* embodied a so-called bloodthirsty judiciary that was alien to Carolingian practice and the tradition of tribal laws, but characteristic precisely of the period of *Landfrieden*. Ewald Schmeken has rightly noted that in the 12th century there was no power capable of introducing an entirely new and homogeneous organization of the local judiciary on the territories of Hesse and Saxony from the Rheine to the Elbe.[410]

I am inclined to see Götz Landwehr's argument as resolving this dispute. He has noted that the community of the *goding* included people of different social status. It comprised all the inhabitants of the *go*, from the wealthy landholding lords to the free peasants and the *laeti*. Every inhabitant, if he had a house on the territory of the *go*, was obliged to attend the assembly and to publicly report any news about crimes. Each participated in the assembly's administration of law and took part in the election of the *Gograf*. The act of election was performed – obviously enough – through acclamation and not through vote count. This was not, however, an empty formality, but a ritual act of great importance and of profound practical consequence. The *Gograf* elected by the assembly was treated as head of the local community and not as an official of any superior authority. Götz Landwehr rightly emphasized that "*godings* were neither courts held by the ruler nor courts held by the lords" (*Die Godinge sind weder landesherrliche, noch herrschaftliche Gerichte*). Only in the 15th century

408 Stüve, *Untersuchungen*; Herold, *Gogerichte*; Philippi, *Sachsenspiegel*, p. 225f. and *Zur Gerichtsverfassung*, pp. 209ff. and "Umwandlung;" Deike, "Burschaft," p. 361f.; Hömberg, *Grafschaft*, pp. 28 and 33; Schmeken, *Gogerichtsbarkeit*, p. 289.

409 Kroeschell, "Zur Entstehung" and *Die Zentgerichte*, p. 300f.

410 Schmeken, *Die sächsische Gogerichtsbarkeit*, p. 281f.

were the influential landholders in many places able to replace *Gograf* elections with a lord's nomination.[411]

We need to add here that the position of the *Gograf* at the assembly court resembles that of the Old Frankish *thunginus* and the Westrogothic *haeradshöfthingi*. The *Gograf* presided over the assembly but did not pass the verdict. This was done by the community gathered at the assembly, whereas the verdict was formulated, on the *Gograf's* bidding, by the most respected and experienced people who "knew the law." They differed from the Frankish *rachinburgi* in that they did not perform the judicial function continuously, but rather when the need arose, that is, when the *Gograf* appointed them to settle a particular case.[412]

It befits us to agree with Landwehr's argument; *gogericht* bears the characteristic marks of the archaic legal order, which do not allow us to consider it as a product of the 12th-century reconstruction of the judiciary. Within the particular territorial dominions, the *Landfrieden* were a reaction to the chaos created by the downfall of royal authority and a complete disintegration of the *comes* jurisdiction. These circumstances increased the importance of the judicial assembly of the territorial communities and brought the institution of the *goding* from the shadows, where it had dwelled for centuries, into a realm lit by written documents. Death penalties and corporal punishment appeared in the entire judiciary in the 12th and subsequent centuries, and thus also in the *godings*. This was a novelty, but it was put in practice by institutions that had existed for a long time. The "bloodthirsty" judiciary does not, therefore, mark the birth of the *goding*. In contrast to the Alemannic *centenarius*, the Saxon *Gograf* was neither the *comes's* deputy nor an official of royal or property administration, which thus explains his absence in the meager documentation of the 9th–11th centuries. The people who produced and preserved those documents did not have any particular reasons to be interested in the *godings* as long as the *comes* judiciary functioned. The fact that the information about the judicial assembly of the territorial communities of neighbors appeared in sources before the institution of *comes* jurisdiction and after its downfall is understandable, and does not mean at all that in the interlude these communities ceased to exist, hold assemblies, or administer law.

The *placitum pagensium* described in the 797 Capitulary was undeniably an institution shaped within the tribal political system. The close similarity of the *goding* to that ancient institution allows us to assume that we are dealing with a

411 Landwehr, *Gogericht und Rügegericht*, p. 138; Schmeken, op. cit., p. 229; Bemann, "Neue Aspekte," p. 112.

412 Schmeken, op. cit., p. 235.

historical continuity despite the discontinuous documentation.[413] This does not mean that every detail concerning the organization of the *godings* that we find in the rich sources of the 15th and 16th centuries can be attributed to the times from before the Carolingian conquest of Saxony. It is worth noting, however, the archaic aspects of the picture that emerges from those sources. The places where the assemblies were held were often located outside the settlements – "on a hill," "on a sandy hill," "on a hill by the oak tree," "by the cemetery by the old lime tree" or "on the pastureland near the place called the bog." The nature of such locations for the assemblies brings to mind associations with pagan cult. The way the assembly site was marked (fenced with hazel sticks linked with rope) also suggests a connection between the *goding* and the old-time cults. This was a traditional way of marking off space protected by sacred peace.[414] This may not be proper evidence, but can be considered circumstantial evidence demonstrating the pre-Christian origin of the institution of the *goding* itself and of the many particular places where the assemblies were held.

The assembly site was simultaneously a meeting point for the general levy. It was the *Gograf*, together with the entire community, who was responsible for its mobilization. At the *goding*, fines were imposed for failing to appear. Similarly to the Scandinavian *herads* and *hundari*, the Saxon *gos* also performed military functions. Like the Frankish *centenas* in the middle of the 6th century, they also served the function of protecting the peace; the inhabitants of the *go* were summoned to collectively pursue malefactors following their "tracks."[415] Finally, the functions of the *goding* concerning the everyday life and household duties deserve to be treated separately. At the assembly, disputes concerning the use of the forest, pasture, and water commons and of local roads were settled. The fifteenth-century Saxon sources indicate that – apart from the territories of intense colonization and the consolidation of villages – there was still no place for self-sufficient village parishes in the late medieval structures of settlement. Apart from the numerous one-mansion settlements, small settlements with fewer than 5 family households were prevalent, while more populous villages consisting of more than 15 houses were infrequent. The *gos* had consisted at that time of 20–40 villages and solitary manors. Considering their area and settlement structure, Ludwig Deike and Götz Landwehr reached a convincing conclusion that the entire *gos* rather than the smaller units that comprised them were the subject of the neighborhood communities sharing the forest

413 Deike, "Burschaft," p. 361.

414 Schmeken, op. cit., pp. 21, 46, 64, 82, 123, 163, 233; Deike, "Burschaft," p. 337; Bemann, "Neue Aspekte," pp. 108 and 113f.

415 Schmeken, op. cit., pp. 221 and 249–253.

and water commons.[416] It seems, therefore, that the organizational foundation of the *godings* was based on settlement clusters linked together, from time immemorial, by various ties of neighborly cooperation.

2. *Kopa* and *Opole*

The picture of the archaic community of the *goding* reconstructed on the basis of the 15th and 16th century sources could arouse critical distrust on the part of scholars had it not been for a stroke of luck: Charles the Great's *Saxon Capitulary*. This example obviously does not exempt us from professional distrust, but it does allow us to look more favorably at the 16th and 17th century sources concerning the so-called *kopa* courts on the Russian lands of the Grand Duchy of Lithuania. Henryk Łowmiański saw the *kopa* courts in this favorable light; he considered them "a remnant of the tribal judiciary," searched for "evidence of the archaic origins of that institution" and attempted to "point to those elements of its organization and functioning that may be helpful in learning about the relations of the tribal age." Before Łowmiański, the Ukrainian scholar Irinarch Čerkaskyj had collected and meticulously examined the source material, which allows us to take a brief look at the issue.[417]

Čerkaskyj, following Iwan Sprogis, derived the term "*kopa*" from Old Russian verb *kopiti, kopiti sja* (to assemble, to gather).[418] This etymology is confirmed by the sources. In numerous documents, the word *kopa* meant undoubtedly a gathering that was convened to hold court or to organize a collective hunt for a criminal by his "track." But not every court assembly was referred to as a *kopa*. This was a technical term that was not used in reference to the local councils of the gentry or to the gatherings of the town people. It referred to neighborly assemblies of the entire populations of territorial communities. The *kopa* was usually attended by the inhabitants of several nearby villages (hamlets) occupying – together with the area of various commons – a territory of 200–300 square kilometers.[419] In terms of geography and settlement, the communities of the *kopa* were thus equivalent to the Saxon *go*, the Alemannic *huntari*, and the Scandinavian *herads*.

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416 Deike, "Burschaft," pp. 32 and 40; Landwehr, *Gogericht*, p. 139f. and *Go*, HRG, vol. II, columns 1722–1726.

417 Łowmiański, *Początki Polski*, vol. IV, p. 202; Čerkaskyj, *Hromadskyj (kopnyi) sud.* The numerous quotations from court documents we find in this invaluable work were, unfortunately, cited in a translation into contemporary Ukrainian.

418 Čerkaskyj, op. cit., p. 35; see Sprogis's introduction in: *Akty Vilenskoj Archeografičeskoj Kommissii*, vol. VII, p. XXIVf.

419 Łowmiański, *Początki Polski*, vol. IV, p. 206f.

Yet, a search for the equivalent of the Saxon *Gograf* or the Swedish *haeradshöfthingi* in the numerous documents related to the judiciary of the *kopa* would be in vain. The *kopa* we encounter in the sixteenth-century sources was a collective subject without a single-person leadership. What also made it different from the Germanic *centenas*, *gos*, and *herads* was that it did not convene on a regular basis on a day known in advance by all inhabitants of the district. The *kopa* was an assembly summoned extemporaneously when a conflict arose on its territory or a crime was committed. In such cases, the initiative of convening the *kopa* belonged to those who were wronged themselves. Many sources also speak about the convening of a *kopa* by the *viž*, that is, a court usher, a *ministerialis*. However, this official was not an organ of the *kopa* community but of the county court. When the *kopa* convened, the *viž* did not preside over it, nor did he administer law. He was a passive, though important, observer who later delivered reports about the verdicts passed by the *kopa* to the county court. The records of those reports found in the county court registers remain the major source of information about the judiciary of the *kopa*.[420]

Without downplaying the differences, we need to emphasize the similarities between the *kopa* and the judiciary of the assembly of the territorial communities in the Germanic world. Foremost, the participants of the *kopa* assembly, even if they lived in different villages, are presented in the sources as neighbors. The duty to attend the assembly itself was treated explicitly as "a neighbor's duty."[421] Let us recall that Charles the Great's 797 *Saxon Capitulary* rendered the assembly of the inhabitants of a district in the same terms; the *ipsi pagenses* who gathered and adjudicated were simultaneously described as "neighbors" (*vicini*, *convicini*). Similarly to the Saxon *goding*, the *kopa* also was an assembly community of neighbors encompassing all social groups. "The entire *kopa*" included local gentry, yeomen (*putnyj bojar*), and peasants (*muži*), including the subjects of various landlords. It happened at times that members of the gentry, invoking their gentry freedoms, tried to excuse themselves with varying degrees of success from participating in the "peasants' court." It also happened sometimes that the *kopa* itself refrained from punishing the guilty, handing them over, in accordance with an immunity or estate privilege, to the disposal of the appropriate court. These were, however, symptoms of the gradual erosion of the assembly communities of neighbors. The common duty to participate in the *kopa* constituted a traditional principle, and

420 Sprogis (see note 60 above), p. XXXVf.

421 Čerkaskyj, p. 50f.

any departure from this principle based on individual or estate privileges seems a relatively recent novelty of the political system.[422]

Information about the unanimity of the verdicts passed by the *kopas* recurs in the sources. These are not mere rhetorical flourishes. When we read that those guilty of snatching bees were sentenced to death by "all the *kopa* participants," or that the "entire *kopa*" gathered from 15 villages and unanimously (although unfairly) found a certain boyar named Szymek guilty, then what we find beneath the stereotypical words about unanimity is an equally stereotypical, one might say ritual, procedure. The Saxon assembly of neighbors in the times of Charles the Great and the national assembly of the Veleti described by Thietmar also made decisions according to the same procedure.[423] The requirement of unanimous approval was an old principle of how the assembly worked both among the Germans and the Slavs.

Although the sources repeatedly emphasize the antiquity of the custom of the *kopa*, we should not treat these assertions literally, since anything that exceeded the horizon of one or two generations was considered ancient. Interestingly, however, the norms according to which the *kopa* functioned were considered customary, that is, based on oral tradition and not on written law. What is telling, moreover, is the extent to which the Statutes of Lithuania from 1529, 1566, and 1588 dealt with the institution of the *kopa*. The first Statute imposed the obligation to offer evidence in disputes concerning the boundaries of one's property on the communities of *kopa*. From the point of view of the gentry, these were matters of great importance that could not be settled without drawing on the collective memory of the communities of neighbors. Royal power, in turn, could not do without the help of those communities when it came to the keeping the peace. According to the 1566 Statute, when a wanderer was killed on a *kopa's* territory, the *kopa* was obliged to consider the case at three consecutive meetings. Two meetings were usually devoted to inquiry, that is, to the interrogation of potential witnesses. At the third meeting – if the killer had not been found – the members of the community should clear themselves of collective responsibility for the crime by swearing an oath. As can be seen, the law of the Grand Duchy concerned itself with the *kopas* only to the extent that they could be burdened with responsibilities vital to the state. Taking into consideration the significance of those responsibilities, the 1588 Statute postulated the creation of *kopa* districts where they had not

422 Čerkaskyj, op. cit., pp. 123 ff., 127 and 222; Łowmiański, *Początki Polski*, vol. IV, p. 207f.

423 *Akty Vilenskoj Archeografičeskoj Kommissii*, vol. XVIII, no. 63, 1582 and no. 82, 1589; see CS, chapter 8 and Thietmar, VII, 25.

previously existed, that is, on the territory of ethnic Lithuania. On the other territories of the Grand Duchy, that is, the Russian ones, the participants of the *kopa* were to assemble as was their custom, in places sanctified by tradition ("in the old *kopa* places").[424]

Those "old *kopa* places," known from quite a few sources in the county court records and in the Lithuanian *Metrica*, were usually located in reclusive places, predominantly in forests and by rivers or lakes: "at the sacred spot by the oak grove," "at the place where the *kopa* had been held for a long time – in the forest by the highroad," "at the sacred spot by the corner mound," "at the sacred spot called Demiańcze Błoto," "at the usual place by the Arcisz family graves," "by the Svinja river." The location of those "old *kopa* places" strongly resembles the locations of the Saxon *godings* and brings about similar associations: the *kopa* places may have once been the sites of pagan cult. Henryk Łowmiański saw this as circumstantial evidence of the very old, and probably pre-Christian, origin of the institution of *kopa* courts.[425]

Let us finally note that the joint functions of keeping the peace and of conducting the court assembly within the same community were characteristic of the *kopa*, the *goding*, and the Frankish *centena*. Sources clearly link the obligation to follow the "track" (*sledogonʹe*), so important in terms of the protection of the peace, with the *kopa*, even though the pursuit of the criminal would frequently be undertaken just after the crime was committed, setting off from the scene of the crime. Initially, only the inhabitants of the nearest vicinity took part in the so-called "hot *kopa*," a group of neighbors gathered to participate in the hunt for the criminal. At times, the hunt was a large-scale undertaking. Then the inhabitants from the entire *kopa* district participated in the "track chase" from the very start, and the traditional site of the assembly (*kopovišče*) was the meeting point. A document from 1538 speaks of such a method of operation: "By the Svinja [river, where the old *kopa* site was located] the *sledogonʹe* and assembly of eleven villages took place."[426] The population of the same eleven villages gathered at the same *kopa* place, both to hold court meetings and to organize a common hunt for a criminal.

As can be seen from this comparative analysis, what the *kopa* had in common with the *goding*, *centena*, and *herad* was a close similarity of structure and function. This was not a coincidence. This is a case of a systemic analogy that supports Henryk Łowmiański's view of the very old genealogy of the *kopa* judiciary. Admittedly,

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424 *Statut Velikogo knjažestva litovskogo 1529 g*., chapter VIII; *Statut II litovski*, chapter XI, article 31; *Statut III litovski*, chapter XIV, article 9.

425 Łowmiański, *Początki Polski*, vol. IV, p. 204.

426 Quoted in Łowmiański, *Początki Polski*, vol. IV, note 651, p. 210.

Łowmiański's conception is not corroborated by sources from the Middle Ages, but this does not disqualify it. It is true that *Russkaya Pravda* presents a community of neighbors that it calls the *verv'* as a subject of the collective responsibility for murders, and burdened with public duties with respect to the protection of the peace.[427] Although it is silent regarding the judicial assembly, *Russkaya Pravda* does not deal with the organization of courts at all. In the law of the Saxons, written down around 802, nothing is said about the judicial assemblies of neighbors either, although their existence in light of the 797 Capitulary is indisputable.

The lack of any mention of the *kopa* (and of the *verv'*, as well) in the sources of the 13th–15th centuries can be explained in the simplest way; there are no documents concerning the organization of courts and the everyday life of the local communities. The political catastrophe of Kievan Rus' brought the production of sources to a halt, and the young Lithuanian state began to produce a more ample documentation only on the threshold of modern times. It is at that time that information about the *kopa* courts started to appear. This is the only direct source evidence that an assembly judiciary of neighbors also existed among the Slavic peoples.

In Poland under the Piast rule, the *opole* was the lowest unit of the order of territorial organization. The Latin language sources often used this word in its original form, adding at times, by way of explanation, also its Latin synonym: *opole id est vicinia*. The etymology of the word *opole* points to a structure based on landscape and settlement. In the Polish language of those times, *pole* ("field") meant not so much arable lands, but rather open space amidst the forests (similar to a glade or *polana* in today's Polish). The Latin word *vicinia* meant literally "neighborhood" or "all the neighbors." In a certain sense, the two words, the Latin and the Polish, supplement one another, drawing our attention to the subjective and objective aspects of the *opole* community; it was simultaneously an association of neighbors and a territorial and settlement unit.

In some documents, the *opole* was described explicitly as a district (*provincia vulgariter opole vocata* or *districtus opole de Mstow*).[428] This was, in any case, a unit encompassing a group of closely located villages and single-manor estates. The name of the main village where the inhabitants of those villages gathered at the duke's or the duke's official's behest, was simultaneously the geographical name of the entire *opole*. The thirteenth-century documents allow us at times

427 On this basis Leontovič (*Russkaja Pravda i Litovskij Statut*, pp. 19 and 25–28) and Lubavskij (*Oblastnoe delenie*, p. 659f.) derived the *kopa* courts from the Old Russian *verv'*.

428 KMp, vol. I, no. 44 (counterfeit dated 1244) and no. 62, year 1263.

to identify the main villages of neighboring *opoles*, with the distances between them ranging from 5 to 22 kilometers. On this basis, Karol Buczek has estimated that the territories of the *opoles* together with the forests lying within their realm usually covered an area of 100–250 square kilometers.[429]

It is difficult to estimate their populations. The documents use the plural form when mentioning villages which together constituted an *opole*. They do not provide, however, any exact details. The most authoritative document with respect to this inquiry is Przemysł II's 1277 document for the Lubiń Benedictines. The duke excluded 9 monastic villages from the Krzywiń *opole* "so that those villages do not pay the ox and cow levy together with the said *opole*." He also excluded them from various fines imposed on the association of neighbors as collective responsibility for crimes committed by unknown criminals. What the context suggests is that the *opole*, though reduced, still had to annually give the duke a cow and an ox at its own expense. It was also left in the position, when need arose, to pay the fines mentioned in the document, including the very high fine of 70 *grivna* for a violation of the peace.[430] After the monastic estates had been excluded, there must have been at least a few villages in the Krzywiń *opole*, and before their exclusion, there had been at least more than a dozen. Thirteenth-century villages falling under the rule of Polish law were typically not populous. They most often numbered four to six households. Nevertheless, in terms of territorial scope and settlement potential, the *opole* seems comparable to the Saxon *go* and the Alemannic *centena*.

The organization of the *opole* has been the topic of extensive research, numerous publications, and polemics. I have also written much on this subject, but I do not intend to offer a survey of the literature or to summarize the scholarly discussions.[431] It will suffice to note several issues significant from the comparative point of view.

The *opole* is an institution that is relatively well, though one-sidedly, documented. Most of the information on the *opole* comes from the 13th century and is mainly linked with the dismantling of the system of ducal rights (based on public dues and public judiciary) caused by immunities. The *opole* also appears in documents that speak of the marking or defining of estate borders. Both cases

429 Buczek, "Organizacja opolna," pp. 232–236.

430 KWp, vol. I, no. 469, 1277; see Modzelewski, "Czy opole istniało?", p. 170 and *Chłopi*, note 50, p. 187.

431 See, in particular, Buczek, "Organizacja opolna;" Podwińska, *Zmiany form*; Modzelewski, "Organizacja opolna" and *Chłopi*, pp. 31–36 and 160–192; see also Matuszewski's polemical work, *Vicinia* and my rejoinder, Modzelewski, "Czy opole istniało?" For older research see, Tymieniecki, *Społeczeństwo Słowian*.

involved either certifying or broadening the entitlements of land holders. This is an example of when the case defines the substance and scope of the information at hand, as well as its zones of darkness. We mostly learn about the functions of the *opole* because the church institutions successfully sought the exemption of their property from the obligations of the *opole* towards the state, while on the other hand, these institutions required assistance and help from the neighborhood communities to determine the boundaries of their own land holdings. It is no wonder then, that the source information concerning the *opole* relates most often to these two issues; they speak either of various obligations imposed on neighborhood communities by the Polish state or of the realization of an obligation that historians have come to call the "border function." Other functions of the *opole* remain on the sideline because they did not concern the interests of the Church and its relations with the state.

We thus know a great deal about the role of the *opole* as a community of the peace. This was a traditional role on which the state drew when it turned the customary principles of neighborly self-defense into public duties exacted under the pain of collective responsibility. The *opole* had to identify and hand over a murderer to the court, or pay the "price for the head" to the relatives of the victim and a public peace fine to the duke. The *opole* was obliged to pay for a robbery or turn in the brigand, and was also burdened with the obligation to follow the "track" of criminals, with failure to do so being liable for a fine. From the privilege Konrad I, Duke of Głogów, granted to the Wrocław bishopric and the Głogów collegiate, we learn that the *opole* was additionally burdened with the obligation of the so-called "shout," that is, the obligation to come to the aid of robbery victims calling for help, although an immediate reaction could only be expected from those inhabitants of the *opole* who lived within the voice's range.[432]

In Greater Poland, the *opoles* were also collective payers of tribute. Each of them gave the duke one ox and one cow per year. The amount of this tribute did not depend on the number of villages or on the number of households within the *opole*. All other tributes resulting from the Duke's law were collected by his tribute collectors directly from each household (the guard or cereal tax – *stróża*,

432 SUB, vol. III, no. 103, 1253: "If the fine for the head is imposed on the *opole* (*super vicinam ceciderit*), then the bishop's or Głogów collegiate's peasants who come from this *opole* have to pay their share of the fine to their lords; similarly, if they fail to respond to the shout when someone is being beaten on the road or robbed […];" see, KWp, vol. I, no. 413, year 1256 – the peasants from the village of Świączyn "do not have to pay, together with the *opole*, the fine of 70 *grivna* for murder [for the violation of peace], nor the fine for robbery [committed by undiscovered offenders]."

the ox or coulter tax – *powołowe*/*poradlne*, the chimney tax – *podymne*) or from each village (annual cattle tax – *podworowe*, pig tax – *narzaz*). Only the *opole* tribute was paid collectively by the inhabitants of the *opole* who had to work out the costs they bore amongst themselves. It happened, at times, that they questioned an immunity, demanding that the inhabitants of the monastic villages which the duke had exempted from the ox and cow tribute participate in its costs.[433] Taking all this into consideration, Karol Buczek has considered the *opole* tribute a relic of the tribal system of finances. It was, in his view, a gift customarily offered by the neighborhood communities to the duke of the Polans.[434] All circumstantial evidence supports the soundness of this hypothesis. Let us note at this point that it assumes a special kind of relationship between the communities of the *opole* as political subjects of a lower order and the tribal entirety with the duke at its head.

The so-called "border function" meant the obligatory assistance of the *opole*, summoned for this purpose by the duke himself or by his official, in demarcating property boundaries. Within thus demarcated borders, no one except the land holder was henceforth allowed to take the land for cultivation. The *opole* that took part in the process of demarcating the borders was obliged from then on, and from generation to generation, to determine the border lines whenever any controversy arose. If the *opole* falsely showed those lines, it had to pay a fine.[435]

But the so-called border function was only the tip of the iceberg. The sources frequently mention it because the interests of the Church were at stake. What follows from the scant but telling information is that the *opoles*, as in the case with the demarcation of boundaries, also had to provide credible information needed by the duke's courts and administration to settle disputes about land ownership and use of the commons, or in particular, to collect tributes for the monarchy. In such cases, written documents were not usually prepared or, at any rate, preserved. In the illiterate community, a collective, multigenerational memory of the neighborhood communities was the most reliable way of preserving and transmitting information about local relations. The *opoles* did not carry out the collection of tributes, but the duke's tribute collectors would not have managed this task without the knowledge provided by the inhabitants of the *opole*.[436]

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433 See KWp, vol. VI, no. 27.

434 Buczek, "Organizacja opolna," pp. 221–229.

435 SUB, vol. III, no. 353, 1261.

436 When conferring an immunity, the duke sometimes moved the privileged village to another *opole* in order to avoid a violation of the exemption resulting from the collectors' ignorance or from information provided by the inhabitants of the *opole*

Moreover, the *opoles* were not an organ of ducal administration. In the times from which our sources come, no person stood at the head of the *opole* community. There was no one comparable to the Saxon *Graf*, the Alemannic *centenarius*, or the Swedish *haeradshöfthingi*. In contrast to the Germanic communities of the assembly, the *opoles* did not convene regularly or at their own initiative. They were convened by the duke or an official acting on the duke's behalf for the purposes of demarcating the borders of a district, gathering necessary information, demanding a murderer to be turned in, or in order to impose on the inhabitants of the *opole* collective responsibility and a fine for murder, failure to perform disciplinary duties, or attestation of a falsehood. On top of everything, these fines were not paid by the *opole* on its own. They were apportioned among the particular *opole's* inhabitants, and the administration of the duke's town district, in the 13th century called a castellany, collected a suitable portion of the collective amount due from each of them.[437]

Because there was no administrator of any kind, and given the fact that the public functions of the *opole* were performed on the basis of mechanisms grounded in collaboration and collective responsibility, it is impossible to consider the *opole* an institution called into being by the state. This was most probably a community much older than Polish statehood and the political system of the duke's rights. This view is also supported by the social make-up of the community; even at the beginning of the 13th century, "the entire *opole*" consisted of "both knights and simple folk" (*tota vicinitas Radeov, tam nobilium quam simplicium*).[438] In this respect, the *opole* did not differ from the *kopa*, *go*, and *herad*. When it came to the lowest unit of territorial organization, the Piast state got in on the act: it subjugated the *opoles* and burdened them with important duties, making use of the traditional function of the community of neighbors. Faced with a similar situation at some time around the year 550, Childebert I and Chlothar I did likewise.

The comparative approach, however, brings attention to the complete absence of any references to judicial assemblies of the *opoles*. The silence of the sources has in this case the strength of evidence. The documents from which we draw information about the *opole's* organization contain detailed clauses of court immunity. Apart from the ruler, only the duke's officials acted in the role of judges. These were the castellans, who headed the town districts, and their deputies. Since the documents mention the abrogation of various ducal officials' jurisdiction over

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that was no longer valid. See Modzelewski, "Czy opole istniało?," pp. 165–169; on the *opole's* testimony in fiscal cases see, pp. 175–178.

437 SUB, vol. I, no. 375, 1249; vol. III, no. 103, 1253 and no. 353, 1261.

438 KWp, vol. I, no. 33.

populations living on Church estates and go into such details as sending the tribute collectors with summons, it is unlikely that any *opole* judiciary function would have been left out, had it actually existed. After all, those same documents exempted the bishop's and monastery's peasants from performing, together with the *opole*, a variety of duties. These duties included attendance at the meeting and collective responsibility in those cases when the duke or his official convened the *opole* "to demarcate the borders or in case of any other matter." Thus we read that the peasants from estates which were given immunity "do not have to appear at the *opole* together with the other villages, nor do they have to send anyone receiving summons to the *opole*." They are also released: "from the *opole*, so that they do not have to appear there in any matter" or "from the neighborhood, commonly called the *opole*, from the ox and cow [tax] and from the *opole* staff" or, even more briefly, "from the *opole* and from the *opole* staff."[439]

All these formulas mean the same thing. The *opole* is not a subject of the judiciary but an aide and an object of the ducal judiciary. It is worthwhile, however, to take a closer look at the two formulations where the exemption from the duty to attend the *opole* convened by the duke or his representative was expressed by means of a material symbol: "from the *opole* staff" (*a lasca opolna*). These words were inserted into the Latin text of the documents in Polish. It suggests that the Polish expression *laska opolna* (the Polish word *laska* means "staff" or "baton") functioned as a formulaic technical term. A material object called the *laska opolna* must thus have been used when the *opole* assemblies were convened, and it is probable that it was a symbol of the assemblies.

Herbord's account of St. Otto of Bamberg's 1128 appearance at the Szczecin marketplace allows us to interpret the meaning of that symbol: "there were," the hagiographer writes, "wooden steps there from which the heralds and the elders spoke to the people" (*gradus lignei, de quibus precones et magistratus ad populum concionari soliti erant*). The missionary addressed the crowd from this rostrum hallowed by the pagan tradition of the assemblies, but one of the pagan priests, raising his crooked staff (*cambucam*), "once and twice strongly hit the stick against a pillar which rose from those steps." He ordered St. Otto to be silent and took the floor. Jacek Banaszkiewicz has convincingly interpreted the priest's gestures and the function of that staff as the symbol of leadership at the assembly. The authorized holder of the magic object was empowered to allow speakers to take the floor or to forbid it, and perhaps also to open and close the meeting.[440]

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439 Modzelewski, "Między prawem," part II, p. 460f.

440 Herbord, III, 17 and 18, p. 179f.; Banaszkiewicz, "Otto z Bambergu," pp. 280–283.

This is most probably the staff that is mentioned in the documents from 1288 and 1292. The *opole* assemblies and courts had already been history at the time, but the *opole* staff remained a symbol of the assemblies convened under the order of the duke, not to decide about something, but to offer assistance to the duke's judiciary and administration. We can certainly see it as a reminiscence of old practices, a piece of circumstantial evidence indicating that the *opole* once was – similarly to the *go*, *centena*, *herad*, and *kopa* – a community of the assembly and the court.

The subjection of those communities to royal power seems to have been stricter in Poland than in western Europe. Although the monarchy of the Piast dynasty monopolized the judiciary, reducing the *opoles* to an auxiliary function, it could not do without them. This also concerned the creation of castle or castellan districts ("castle" refers to a stronghold or fortified structure used for defense, economic, administrative, or cult purposes and their settlements). The information provided by the sources is obviously fragmentary, yet it allows us to ascertain that there were at least three *opole* centers in the Przemęt castellany (Przemęt, Brońsko, and Kamieniec), four in the Lądek castellany (Lądek, Sławsk, Biała, and Zbar), four in the Śrem castellany (Śrem, Drzonek, Krzywiń, and Niedzeszyn), and three in the Giecz castellany (Giecz, Chocicze, and Drzechcza).[441] We learn the most about the relation of the *opole* territories with the castellany districts thanks to the Włocławek bishop's dispute with the local ducal administration regarding hunting entitlements in the forests of the Wolbórz castellany.

In the first half of the 12th century, the Włocławek bishopric received from the ruler a castle in Wolbórz, together with the majority of the neighboring ducal villages and the castellany jurisdiction over their inhabitants, as well as ducal hunting rights (*regalia*) over the entire territory of the castle district of Wolbórz. The public judiciary and administrative authority over those knight's villages – and the other ducal villages there – were held by the castellans of two neighboring ducal castle districts: Łęczyca and Rozprza. Because the episcopal property castellany was created there, the Wolbórz castle district ceased to be a part of the territorial management of the monarchy, and a new administrative border was drawn along the bed of the Wolborza river. The old borders of the Wolbórz castellany continued to have a practical significance for the bishopric, however, because they demarcated the territorial scope of its hunting entitlements.[442]

441 Buczek, "Organizacja opolna," pp. 234, 232 and 236.

442 Modzelewski, "Między prawem," part II, p. 460f.

The bishopric strived to have its rights affirmed, as they were apparently questioned by the duke's officials responsible for hunting privileges. In the compromise of 1250, Casimir I, duke of Kuyavia, decided that "in the entire Wolbórz castellany, even when the village belongs to a duke, knights, or anyone else, especially in the Sierosław forests (*et specialiter in siluis de Syroslaue*), only the bishop is allowed to catch beavers and all other [reserved – K. M.] kinds of game."[443] The Sierosław forests mentioned here – which, as can be seen, were of utmost interest – separated the settlements of two neighboring *opoles*: Wolbórz and Rozprza. The former boundary of the castellany also ran through those forests. The confirmation of the rule that the hunting privileges north of that border belonged to the bishop proved insufficient. For more than a hundred years, the administrative power of the Rozprza castellan had extended much further into the northeast, up to the Wolbórz river, and the former borderline in the Sierosław forests was apparently questioned by that same Rozprza castellan.

In this situation, the bishop approached the duke for a legal judgment to put an end to the ambiguities. In 1255, Duke Casimir (son of Konrad) delegated two officials of the court, who by virtue of the duke's order "convened the Wolbórz *opole* and the Rozprza *opole*" and summoned them to under oath "show the borders demarcated long ago between the aforementioned castellanies" (*vicinia de Wolborz et alia de Rosprza* […] *Casimiri ducis* […] *auctoritate uocate super eo et requisite, ut terminos et limites suprascriptarum castellaniarum ostenderent ab antiquo constitutas, iuramento affirmaverunt* […] *quod terminos castellanie de Wolborz et alterius de Rosprza antiqua constitucione isti fluvii sic dividant et terminant*).[444]

We are not dealing here with a routine situation when the *opole* affirmed the borders of a property it had once assisted in demarcating. In this case, the old borders of a castle administrative district were at stake, a district which had for more than a hundred years been non-existent. Moreover, two rather than one *opole* were summoned to show its borders. The current administrative border was in a different place, but the inhabitants of the Wolbórz and Rozprza *opoles* were able, despite the passage of several generations, to unanimously and meticulously point out the beds of the streams in the Sierosław forests along which the borders of the liquidated castellany once had run. To them, the course of that border did not lose any of its practical significance because it was still an actual border of the territories of the *opoles*. Yet the duke, the bishop, and the castellan of Rozprza had no doubt that the old border of the castellany ran along the borders of the *opole*

443 DKM, no. 13, p. 76, year 1250; see, KPol, vol. I, no. 19, year 1228.

444 DKM, no. 14, p. 80, year 1255.

territories. This is how it was everywhere: it was sufficient to show the borders of the *opoles* to know how the borders of the castellanies ran.

In my view we can, and even should, compare the Wolbórz document of 1255 with the document from 890 of Bishop Salomon, the St. Gallen abbot, even though the differences between them are significant. The Kuyavian bishop was interested in hunting privileges, while the Swabian abbot was concerned with a share of the neighborhood commons on the territory of Rheinigau. We can see very clearly the structural similarity of the situation; in both cases, people from neighboring districts were summoned and under oath gave testimony on the basis of which the exact borderlines between those districts were established. That border was important for the St. Gallen abbot because it demarcated the territorial scope of the commons. The Włocławek bishop was interested in the territorial scope of hunting privileges. The border separating the Rheinigau district from the district of Thurgau was simultaneously a border between the counties of Linzgau and Thurgau. Similarly, the border dividing the Sierosław forest between the Wolbórz and Rozprza *opoles* was simultaneously the old border of the castellany. In Alemannia under Frankish rule, the *comes* districts were assembled from the much older territorial communities of neighbors organized politically as *centenas*. In Poland under the reign of the Piasts, the castle districts, later called castellanies, were created out of the *opole* territories.

I do not suggest that the builders of the Piast state followed the western model in this case. In my view, this is not possible. No model was necessary, anyway. The Merovingians, Carolingians, and Piasts, after all, faced similar situations that required similar solutions. It was possible to destroy the political structures of the tribes, but it was not possible to create a kingdom out of nothing. The architects of those kingdoms had to rely on some of the structures and make use of some building blocks that had been part of the construct of the previous tribal organization. On the Germanic and Slavic territories of barbarian Europe, this role had been performed by the territorial communities of neighbors that went under a variety of names. They satisfied the demands of everyday life and work, and at the same time – through the protection of peace, the administration of justice, and defense functions – created the basic conditions for the functioning of wider political communities: the tribes, and later the states.

Chapter VII. The Institutions of the Tribal Community

1. Segmentary Structures

For reasons that are more than obvious, at the twilight of antiquity the Roman authors were primarily interested in those of the barbarian peoples who threatened the integrity of the Empire. The majority of the source information about the Germanic peoples from that period concerns those tribes, or more precisely, groups of warriors, who together with their families, their own military organization, and the baggage of their own traditions entered the territory of the Empire, either as *foederati* or as conquerors. Modern historiography remains largely under the influence of that point of view. According to the textbooks, the "migration of peoples" became the name of the period. Reinhard Wenskus, Herwig Wolfram, and Walter Pohl have indeed discredited the stereotype of the massive migration of entire ethnic communities of homogeneous constitution,[445] but the debate about the political system of the tribes continues to cling to the perspective of the late ancient sources and the paradigm of an armed people on the march. As a result, for historians the tribe appears first and foremost as an association of warriors rather than as a political and territorial structure.

And yet the Celts, the Germanic peoples, and the Slavs whom the Empire encountered were not steppe nomads. They were more or less sedentary agricultural peoples. Procopius of Caesarea did, indeed, note that the Sclaveni and the Antes lived in miserable huts and often moved, but this observation does not suggest a nomadic lifestyle, but rather a certain lability of settlement linked with extensive systems of land cultivation. I am not able to estimate to what extent this lability may have been conducive to large-scale migrations. The mechanism of migration known as the Migration Period or the "migration of peoples" remains, despite advancements in research, an open question. I do not take it up in this book. I shall limit myself to a suggestion, quite obvious in my view, that we should look for the causes of that phenomenon not so much on the tracks of military migrations as in the places where they began – on the territories of *barbaricum*. The tribes were not personal associations of warriors who in their belief in their collective ethnogenesis followed their leader to some promised land. They had a territorial

445 Wenskus, *Stammesbildung*; Wolfram, *Die Goten* and *Typen der Ethnogenese*; Pohl, *Le origini etniche* (esp. *Introduzione*, pp. 1–38).

basis, and their sense of connection to their native territory constituted an essential marker of their tribal identity. This is suggested by the ethnic names of many Slavic tribes which were formed from the geographical names of their territories: Polabians, Circipani, Vistulans, Poborane, Slezani, Polans, Lendians, Masovians, and Severians. The names of particular Saxon tribes also drew upon geographical names: Westphalians, Ostphalians (*Osterliudi*, literally eastern people), Nordalbings (*Nordliudi*). The territorial structure of the tribes is thus the first question that needs to be asked when considering their political organization.

When characterizing the political system of the pre-colonial states of West Africa, Michał Tymowski introduced the term "segmentary system" to Polish historiography.[446] I would not dare to place barbarian Europe and Sub-Saharan Africa on the same horizon of comparative reflection. I have neither the appropriate knowledge nor the methodological qualifications of an African studies historian to do so, nor do I have expertise in ethnography. However, I will take the liberty of borrowing from Michał Tymowski the term that perfectly fits the organization of Germanic and Slavic tribes. They were segmentary structures.

The territorial community of neighbors was the basic segment of the tribal system. It independently coped with the everyday problems of economic life, with the protection of customary order, and with the taming of criminals and settling of disputes. Yet, it was not capable of handling more serious military challenges. Waging a war, conducting peace talks, and forging alliances were in the hands of a political community of a higher order, that is, of the tribe, which most often consisted of several or several dozens of local communities. Without such a politico-defensive structure, the particular *herads*, *opoles*, or *gos* could not confront any external threats and had no chance to survive.

Yet the tribe could not function without the contribution of the neighborhood associations, because it did not have administrative instruments to protect the internal peace, to mobilize the general levy, to collect the resources to pay political tribute, or to organize work when building a *gród* (fortification) or hewing a clearing in the forest borderland. It is no surprise that the territorial communities of neighbors were treated as political subjects that together constituted the tribal organization. This can be seen in the account given in the *Life of St. Lebuin* about the assembly of the Saxons at Marklo. The hagiographer describes this assembly emphatically as a meeting of the representations of all the Saxon territorial communities of neighbors (*pagi*). The presence of the representatives of those local units was also noted in the promulgation of the 797 *Saxon Capitulary*.

446 Tymowski, *Państwa Afryki*, pp. 132–139 including a survey of the literature.

The editor of that act thought it fitting to emphasize that the Saxon participants of the assembly came to Aachen from various districts located within three tribal territories: of the Westphalians, the Angrivarii, and the Ostphalians (*simulque congregatis Saxonibus de diversis pagis, tam de Westfalais et Angariis, quam et de Ostfalahis*).

There were no redundant words in the promulgation of this *Capitulary*. Each term used had a political meaning. It needed to be emphasized that the announcement of such an important act took place in the presence of and with the unanimous consent from the competent circles of the Saxon and Frankish societies (*omnes unanimiter consenserunt et aptificaverunt*). What testified to the representation of the Franks gathered there for the occasion were the church and lay ranks: they were bishops, abbots, and *comites*. The fact that the Saxons present at the assembly came from the various *pagi* located in the lands of the Westphalians, Angrivarii, and Ostphalians constituted a warranty of their political representation. In 797, those lands already belonged to the Frankish state, but before and during the conquest the Westphalians, Angrivarii, and Ostphalians had acted as separate and largely self-reliant political subjects within the Saxon community.

During one of Charles the Great's expeditions in 775, a meeting took place by the Oker river, "attended by all the Ostphalian Saxons (*omnes Asterleudi Saxones*) – together with Hessi and they gave hostages […] and swore oaths that they would be loyal to King Charles." Soon, another meeting of similar kind took place: in the Bucki district, to see Charles returning with his army, "the Angrivarii arrived together with Bruno and other optimates and they gave hostages just like the Ostphalians did" (*et dederant ibi obsides sicut Austrasii*). The Westphalians continued to resist, which is why Charles the Great "charging with his army at those Saxons again, inflicted […] defeat upon them and seized much war booty amongst them. And they gave hostages, just like the other Saxons." In 779 again, "the king invaded the territory of the Westphalians and conquered them all" (*rex Westfalorum regionem ingressus omnes eos in deditionem accepit*). From there, he arrived at the Weser and made camp in a place called Midelfull. The Angrivarii and the Ostphalians arrived there and gave hostages and swore oaths."[447]

The terms Ostphalians, Angrivarii, and Westphalians evidently refer here to the proper names of those human communities, although two of them derive from geographical names. What is more, annalists described the same groups either with

447 ARF, pp. 40 and 42; AEinh, p. 55.

separate proper names or with their collective name – the Saxons. The Ostphalians, Angrivarii, and Westphalians, and undoubtedly also the Nordalbings, took part in the annual national assembly meetings at Marklo on the Weser where – according to the reliable account of the hagiographer of St. Lebuin (chapter 4) – collective decisions were taken concerning war and peace (*quid per annum essent acturi sive in bello sive in pace, communi consilio statuebant*). At the same time, however, each of the Saxon tribes had its own political and military organization. Each had its own leader (the Ostphalians had Hessio; the Angrivarri had Bruno; and the Westphalians had Widukind) and their own elders. Each made independent decisions about making and swearing peace, and the provision of hostages or the continuation of war. Each, therefore, had its own political institutions by means of which those decisions were made. Hessio, Bruno, and Widukind were not kings but military leaders appointed from amongst the elders. The Saxons did not have a king at all. They had only the collective assembly at Marklo, the local assemblies (*godings*) in the communities of neighbors, and – as Martin Lintzel rightly argues – also had to have had assembly meetings of each tribe.[448]

We are dealing here with a three-level segmentary structure: the *go*, the small tribe, and the federation of tribes. Treating the Saxons as an ethnic community, Lintzel chose not to treat the communities of lower order in the same way. He therefore did not refer to the Ostphalians, Angrivarii, and Westphalians as tribes, but described them with the anachronistic term "provinces." He was fully aware of the fact that those "provinces" were organized in the same way as the community of higher order. Lintzel most probably attempted to avoid terminological schizophrenia; it seemed to him that an ethnic Saxon could not at the same time be an ethnic Angrivarius. Yet, neither the barbarians themselves nor the civilized authors writing about them saw any contradiction in it. Ammianus Marcellinus, no doubt, considered the federation of the Alemanni as a people (*gens*), and thus as an ethnic group in the Roman understanding. This did not prevent him from describing the Bucinobants who were part of the Alemanni federation with the same term: the *Bucinobantes* were *gens Alamanna*, a smaller ethnic community which constituted part of a wider ethnic community.[449]

Tacitus represents this issue in a similar way. The Suebi, he wrote, "are not a homogeneous people, like the Chatti and the Tencteri […], but they are divided into groups that differ one from another in terms of origin and names, though all are called generically the Suebi" (*quorum non una, ut Chattorum Tencterorumque*

448 Lintzel, "Gau," p. 277f.

449 Amm. Marc., XXIX, 4, 7.

gens; […] *propriis adhuc nationibus nominibusque discreti, quamquam in commune Suebi vocentur*). The recognition of this difference did not prevent Tacitus from writing in the next chapter of *Germania* that all the Suebi tribes are of "one blood." On the territory of the Semnones there was a forest sanctuary where "all the peoples of this blood [i.e., Suebi blood – K. M.]" (*omnes eiusdem sanguinis populi*) sent their envoys to collectively make public human sacrifice. Tacitus saw a connection between their common ritual and the conviction about the ethnic blood community uniting the Suebi across the tribal divisions: "All this superstition implies the belief that from this spot the nation took its origin, that here dwells the supreme and all-ruling deity, to whom all else is subject and obedient" (*eoque omnis superstitio respicit, tamquam inde initia gentis, ibi regnator omnium deus, cetera subiecta atque parentia*).[450]

From the references to the events of 775 and 779 we find in the annals, we know that the Ostphalians, Angrivarii, and Westphalians were capable of forging individual and separate treaties. This suggests that the particular (i.e., small) tribes had a military potential and political structures which allowed them to function independently, outside the broader federation of tribes. What corroborates this view is also the panorama of West Slavic tribes from the middle of the 9th century depicted in the *Bavarian Geographer*. The *Geographer* called the tribe (or, more precisely, the tribal territory) *regio.* At times one *regio* encompassed several others. We thus learn that the Veleti are a tribe "in which there are 95 local centers (*civitates*) and 4 tribes […]. In their vicinity, there is a tribe called the Sorbs within which there are more [tribes – K. M.] that [altogether] have 50 local centers" (*Vuilci, in qua civitates XCV et regions IIII* […] *Iuxta illos est regio, quae vocatur Surbi, in qua regiones plures sunt, quae habent civitates L*). Let us recall that the local centers (*civitates*) mentioned in the *Bavarian Geographer* were most probably at the fore of the neighboring territories and their number was to give an idea of the military and demographic potential of the particular peoples. The Veleti and the Sorbs had, according to that source, a three-level structure because they were a federation of tribes. We encounter a similar structure amongst the Obotrites: "Those who live closest to the borders of the Danes are called northern Obotrites, and they are a tribe in which there are 53 local centers divided among their dukes" (*Isti sunt, qui propinquiores resident finibus Danorum, quos vocant Nortabtrezi, ubi regio, in qua sunt civitates LIII per duces suos partite*). This formulation probably refers to accounts in the annals about Louis the German's campaign against the Obotrites in 844, when the great Obotrite duke, Gostomysl, called a king in the

450 Tacitus, *Germania*, chapter 38 and 39.

Annals of Fulda, was killed. The other dukes then recognized the authority of Louis the German. The way in which the *Annales Bertiniani* and *Annales Xantenses* wrote about those dukes suggests that they headed particular tribes that were part of an Obotrite confederation.[451]

Yet, apart from this, the *Bavarian Geographer* names "small" tribes that were completely independent political subjects and not any segments of a larger structure. This category includes: the Linones with seven local centers, the Hevelli with eight local centers, the Daleminci with 14 local centers, as well as the Slezani (15 local centers), the Dadosezani (20 local centers), the Opolans (20 local centers), and the Golensizi (5 local centers). It seems that after Louis the German's campaign and Gostomysl's death, the Obotrite federation was dismantled and its constituent parts – the "small" tribes – remained for some time separate entities without a common rule.

The Veleti federation also probably suffered a crisis. From sources at the end of the 10th century and later, we learn that in its place was a federation of the Lutici tribes. The change of name must have been linked with some redefinition of the political community. Indeed, the Lutici differed from the Veleti not only in name and tribal make-up but, above all, in their political system. At the head of the Veleti was the duke (*rex* or *regulus* in the understanding of the Carolingian annalists). Each of the tribes that was part of the Veleti confederation also had its own duke. In 789, when Charles the Great went against the Veleti, the king of the Franks accepted surrender from Dragovit, "because he was the most prominent amongst other Wilzi rulers both in terms of familial nobility and the authority of his age" (*nam ist ceteris Wiltzorum regulis et nobilitate generis et auctoritate senectutis longe praeminebat*).[452]

The Lutici, on the other hand – similarly to the Saxons from before the Frankish conquest – made do without any royal (ducal) authority. They obviously had military leaders, but the institutions of pagan cult were what played the most crucial role in their political system. According to Thietmar's magnificent account, the temple of Svarozic in Riedegost on the territory of the Redarier was the keystone of the trans-tribal structure, although the other tribes also had their own temples. Riedegost was, however, the meeting point from which the Lutici tribes set off for war, and their sacred battle banners were stored in its temple. They were taken from the temple when setting off to war and returned there afterwards. After a

451 AFuld., p. 35; *Annales Xantenses*, MGH ss, vol. II, p. 22; *Annales Bertiniani*, p. 31. On interpretation of these accounts, see Wachowski, *Słowiańszczyzna*, p. 73 and Fritze, *Frühzeit*, pp. 111–126.

452 AEinh., p. 85.

successful war, the troops from all the tribes thus returned first to Riedegost where they offered Svarozic part of the war booty. It was also there that the tribesmen sought the gods' opinion before they made decisions crucial to the federation. They did so in a double oracle ritual: the drawing of lots and horse divination. It is most probably there that the trans-tribal assemblies described in detail by Thietmar were held. The cult leadership of Riedegost effectively integrated the Lutici federation and secured a hegemonic position for the Redarier tribe. Thietmar knew that Lutici was the name of the federation of tribes and that each tribe had a name of its own. "There is no individual chief," he wrote, "who presides over all of these people who are collectively referred to as Liutizi" (*Hiis autem omnibus, qui communiter Liutici vocantur, dominus specialiter non presidet ullus*). From amongst the tribes constituting the federation, he named only the Redarier.[453]

It was only Adam of Bremen and Helmold after him who informed us precisely that the Lutici federation included four tribes: the Kessinians and the Circipani north of the Peene and the Tollenser and the Redarier south of that river.[454] Both chroniclers equated the Veleti with the Lutici. Adam of Bremen even thought – obviously mistakenly – that the Germans had given this purely Slavic name to the Lutici. It indicates, however, that the older name did not fall into oblivion. It probably still continued to evoke ethnic ties.

However, the political continuity of the federation of tribes was most probably broken in the 10th century. A 965 document of Otto I for the St. Maurice monastery in Magdeburg suggests that the particular Veleti tribes – the Redarier, the Tollenser, the Circipani – remained separately in tributary dependence on the empire.[455] It is on this and on the annals' references to battles and separate treaties with the particular tribes that Wolfgang Fritze bases his thesis that the Veleti federation fell apart, and a new trans-tribal structure called the Lutici appeared in its place after a long break, probably around 983, at the time of the victorious undertakings of the north Polabian tribes against Germanic domination and attempts to introduce Christianity. Fritze assumes that the dukes of the Redarier, Tollenser, and Circipani were killed for supporting the empire and Christianity, which would explain the absence of ducal leadership and the eminent role of the priests of Svarozic within the political system of the Lutici federation.[456]

Between 1057 and 1059, an internal conflict among the Lutici tribes occurred; according to Adam of Bremen, the Circipani, and according to Helmold, also the

453 Thietmar, VI, 23–25.

454 Adam of Bremen, III, 22; Helmold, I, 2 and I, 21.

455 DO, vol. I, no. 295.

456 Fritze, *Frühzeit*, pp. 137–143 and 155–159.

Kessinians, launched a military attack against the hegemony of the Redarier. The secession of the Kessinians and the Circipani was an indirect consequence of that conflict. Both of the dissident tribes found themselves under the authority of the Obotrite duke Gottschalk.[457]

The Obotrite federation had its own history of break-up and union. The Wagri, the Polabians, and the Obotrites proper constituted the core of that federation. What the sources allow us to understand is that the great duke's leadership over the dukes of the particular tribes is what symbolized their political unity. This ceased for a number of years after Louis the German's campaign in 844. There was a similar situation before 967 and after Nakon's death. Widukind tells us that Sielibór, duke of the Wagri, and Mstislav, duke of the Obotrites proper, were then directly dependent on the Saxon duke, Herman Billung, and both remained in a state of feud.[458] A break-up of the great tribal duchy took place again after the pagan reaction and Lutici intervention in 1018. Again in the thirties of the 11th century, we encounter three dukes there, two of whom (Anadrag and Gneus) were, according to Adam of Bremen, pagans and the third (Udo) "a bad Christian." The difference in religion points to a lack of any common policy in relation to the Roman empire and Christianity, and hence, a lack of political community among the tribal duchies.[459]

In light of these vicissitudes, the trans-tribal structures of the Saxons, Veleti, Lutici, and Obotrites emerge as more or less lasting alliances of independently organized subjects. The hegemony of one of them may have cemented them or been a bone of contention, but the break-up of the complex structure did not entail the annihilation of any of its segments. They continued to live their own lives because they had the same institutions necessary for political existence, institutions which also functioned on the trans-tribal scale. Each of those "small" tribes had its own assembly, a sanctuary with its own organization of cult, its elders, its priest or priests, and at times a duke. The smallest neighborhood segments of that structure were organized similarly – with an assembly, place of cult, and leader – and it was only the fact that they were not very populous that prevented them from acting as an independent subject of war and peace alliances.

Royal (ducal) leadership was not a common principle. Scholars researching the regions of the Polabian Slavs are inclined to treat the Lutici as an exception to the rule, a kind of peculiarity born of a special coincidence of historical circumstances.

457 Adam of Bremen, III, 22; Helmold, I, 21; Wachowski, *Słowiańszczyzna*, p. 88f.
458 Widukind, III, 68.
459 Adam of Bremen, II, 66.

Yet it is easy enough to hop the fence of ethnicity and take a look at the other side of the Elbe to note far-reaching similarities between the Lutici and the Saxons. Tacitus, whose evidence cannot be omitted on this occasion, stated explicitly that only some of the Germanic tribes had kings. The assembly was the widespread political institution among the Germanic and Slavic tribes. What also seems widespread is the link between the assembly and pagan religion, and it is time for us to examine these institutions in their mutual relation.

2. The Assembly and Cult

From the community of neighbors to a federation of tribes, the assembly was the basic institution of the community and functioned on nearly identical principles. We can see it clearly when comparing the information from the 797 *Capitulary* about the Saxon assemblies of neighbors and Thietmar's chronicles about the national assembly of the Lutici. Let us recall that chapter 4 of the *Saxon Capitulary* concerned issues which were adjudicated in Saxony by "the inhabitants of the district" (*ipsi pagenses*), who were also referred to as the culprit's neighbors (*proprii vicinantes, convicini, vicini*). A man tried by his neighbors who disagreed with their verdict could seek justice at the court of the Frankish king. He could also be summoned to the king and tried before him if he simply ignored the neighbors' verdict.

Chapter 8 of that same *Capitulary* concerned the specific situation when the defendant ignored both his neighbors' verdict and the king's summons to appear at court. Although I have already written about this, it is worthwhile to cite the chapter in its entirety:

> As regards fire-raising, it has been agreed that no one is to presume to perpetrate this within a Saxon county out of anger or because of blood-feud or for any malicious desire but only if someone is so rebellious that he refuses to do justice and cannot otherwise be compelled to submit to judgement and scorns to come to us, so that he may render justice in our presence. In such an event let the public judicial assembly be summoned and the inhabitants of the district come there together; and if they agree unanimously (*si unanimiter consenserint*) that his house should be burned in order to coerce him to judgement, then let the burning be carried out by virtue of the decision reached at the public assembly, according to their old law (*secundum eorum ewa*), and not by reason of any anger or malicious intent but solely for coercion to judgement on our behalf.[460]

460 CS, chapter 8 (LST, p. 18): *De incendio convenit ut nullus infra patriam praesumat facere propter iram aut inimicitiam aut qualibet malivola cupiditate excepto si talis fuerit rebellis qui iustitiam facere noluerit et ad nos ut in praesentia nostra iustitiam reddat venire dispexerit; condicto commune placito simul ipsi pagenses veniant et si*

The judiciary, the observance of which Charles the Great wanted in this way to enforce, was "ours" (*districtio nostra*), that is, his, Charles the Great's. Yet neither the hands that set fire to the "rebel's" house, nor the mouth that spoke the verdict were the king's. It was the Saxon collectivity of neighbors at the assembly (*placitum pagensium*) that first imposed and then carried out the draconian punishment. This was because the "rebel" had disregarded the assembly of neighbors' (*placitum pagensium* = *placitum vicinorum*) previous verdict just as he had disregarded the king's summons. In Saxony, the "arm of the law" of Charles the Great was still too short to be able to entrust his officials with judging and repressing such behaviors. For the time being, therefore, he relied on the ancient mechanism of repression used in such cases by the local community.

In 797 on the conquered territories of Saxony, this mechanism was still in use only at the lowest level, that is, within the territorial communities of neighbors. The higher level units of tribal organization had already been destroyed by the conquerors. Thietmar's chronicle, nearly 220 years later than the *Capitulary*, allows us to capture the same mechanism of repression and the same assembly procedures on the level of the federation of the four Lutici tribes. "There is no individual chief," Thietmar tells us, "who presides over all of these people who are collectively referred to as Liutizi. When important issues are discussed at an assembly, there must be a unanimous agreement before any action can be undertaken. If one of their countrymen opposes such a decision during an assembly, he is beaten with rods and if he openly opposes [the decision] outside the assembly [that is, after the assembly and its decision], he will either lose everything through burning and continuous plunder, or he must come before that body and, in accordance with his status, pay compensation for his sin."[461]

The striking similarity of the content of both sources is not a matter of literary borrowing. The manuscript tradition of the *Saxon Capitulary* is meager. It is preserved in barely two copies and certainly was not on the reading list of the

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unanimiter consenserint pro districtione illius causa incendatur; tunc de ipso placito commune consilio facto secundum eorum ewa fiat peractum et non pro qualibet iracundia aut malivola intentione nisi pro districtione nostra (…).

461 Thietmar, VI, 25, pp. 349–351: *Hiis autem omnibus, qui communiter Luitici vocantur, dominus specialiter non presidet ullus. Unanimi consilio ad placitum suimet necessaria discucientes, in rebus efficiendis omnes concordant. Si quis vero ex comprovincialibus in placito his contradicit, fustibus verberatur et, si forinsecus palam resistit, aut omnia incendio et continua depredatione perdit aut in eorum presentia pro qualitate sua pecuniae persolvit quantitatem debitae.*

German clergy in the 10th century. Nothing suggests that Thietmar knew that text and drew inspiration from it. Moreover, we find in Thietmar's text details which are absent from the *Capitulare Saxonicum*: beating the opponents with rods to achieve unanimity at the assembly, the "continuous plunder" (*continua depredatio*) of the culprit's possessions, and the possibility of avoiding the feud by paying an amount appropriate to "his status" at the assembly.

We need to appreciate the credibility of both sources. Charles the Great's *Capitulary* was brought about to effectively regulate the means of maintaining control over the conquered lands of Saxony. It therefore had to be based on a good understanding of the realities at hand. As bishop of Merseburg, Thietmar knew the Slavs well, and at the same time he was part of the political elite of the kingdom. He also knew in detail from those closest to Henry II of the German-Lutici political contacts and connections that led to a war alliance against Bolesław I the Brave's Poland. The chronicler's detailed information about what Svarozic's temple in Riedegost looked like, about the drawing of lots and horse divination, and about the trans-tribal assemblies undoubtedly came from eyewitnesses. Henry II's envoys must have been, after all, present when first the oracles and then the assembly supported the alliance.

The similarity of the information from the *Saxon Capitulary* and Thietmar's Lutici excursus merits serious treatment and careful analysis. We are touching here on reality and not on literary *topoi*. Before we proceed to the punishment, let us take a look at the guilty deed. The *Saxon Capitulary* speaks of the disregard of a verdict passed by the assembly of neighbors. Thietmar, on the other hand, speaks of opposing the implementation of decisions made by the general assembly. Despite these differences, the situation is essentially the same: a rebelling individual violates the foundations of the social order of the community by refusing to comply with the decisions of the assembly. What seems likewise significant, besides the insubordination itself, is the arrogant behavior of the culprit toward the highest authorities. A Saxon who did not obey the verdict of his neighbors becomes a "rebel" when, summoned for this reason by the Frankish king, he disregards the obligation of appearance. The editor of the Capitulary writes explicitly about this contempt, or despect: *venire dispexerit*. A Lutic finds himself in an analogous situation when he openly resists after the assembly of his fellow tribesmen has made a decision (*si forinsecus* ***palam*** *resistit*). This ostentatious act was a challenge and also a symptom of what we nowadays might call lawlessness or anarchy. The archaic communities considered it a sacrilege. The profaned community – no matter whether it was a community of neighbors or the tribe – reacted to it in the same way: burning down the household of "the public enemy" and plundering his property.

That "continuous plunder" (*continua depredatio*) rules out any thought about confiscation or any other administrative procedure.[462] Any misunderstanding or mistake on Thietmar's part is also out of the question. The chronicler translated literally a Slavic technical term into Latin. We know the native version of this term from the *Vast Russkaya Pravda*. In accordance with its norms, the wergild for murder committed "in a quarrel" or openly at a feast was paid by the culprit with the help of the *verv'* (community of neighbors) on the basis of reciprocity, since he contributed too, when the *verv'* collectively paid the *vira* (*iže sja prikladyvaet viroju*). Yet no support from neighbors nor any possibility of paying the wergild was provided in the case of a brigand murder: "And if he murders like a brigand without any quarrel, then the people do not pay for the brigand, but must subject him to exile with everything, his wife and his children, and plunder his property" (*Budet' li stal na razboj bez vsjakoja zvady, to za razbojnika ljudi ne platjat', no vydadjat' i vsego s ženoju i s detmi na potok i na rozgrablenie*). Arsonists were punished in a similar way: "If someone burns the granary, let him be exiled and his house plundered" (*Aže zažgut' gumno, to na potok, na grabež' dom ego*).[463]

In the times of Vladimir Monomakh, the practice of folk justice was already moving under the control of the duke. The *verv'*, that is, the neighbors (folk, people), could no longer exile (*potočiti*) a criminal on the strength of their own decision. They had to "turn him over to exile and plunder." The lexical meaning of the word "plunder" unambiguously points to the archaic practice out of which the royal confiscation emerged. In Thietmar's Lutici excursus that practice was still alive and well, and looked just as it was described: *continua depredatio* means continuous plunder, frequently repeated and not a single act of taking over the culprit's property. There were no tribute collectors, *sagibarons*, or counts among the Lutici at the beginning of the 11th century or among the Saxons before the Frankish conquest who could carry out confiscations. The repressive measures were undertaken directly by the members of the community of neighbors themselves (*ipsi pagenses, convicini*) or fellow tribesmen (*conprovinciales*). They were the ones who decided at the assembly what to do with the culprit, and they set

462 Translators of Thietmar, including the Polish editor and translator (M.Z. Jedlicki) and the English translator of the text which was used in this English edition of my work (see Author's Note Regarding the Translations of the Primary Sources, p. 407), have arbitrarily chosen to translate *continua depredatio* as "confiscation" and not as "continuous plunder (or depredation)," which I consider a sort of disbelief or a contemporary refusal to see the reality of the times.

463 PrP, articles 6, 7 and 83. On the meaning of the two terms, see Poppe, *Potok i grabież*, SSS, vol. IV, Wrocław 1970, columns 250–252.

fire to his house. Each of them could take anything he liked from the culprit's movable property. We are not dealing here with administrative coercion, but with the vengeance of the community, a public feud of all against one.

In *Russkaya Pravda*, plundering was inseparable from exile (*potok*), and some later sources mention that it was also accompanied by the burning of the culprit's house.[464] In Thietmar, burning and plundering are like two sides of the same coin. Burning someone's house meant depriving him of his place among the people, placing him outside the pale of the community, and resulted in depriving him of his right as a subject and any legal protection (of peace). An exile could have all his property taken with impunity. He could also be killed without anyone paying his wergild and without risking a blood feud from anyone. It is worthwhile to recall Helmold's perceptive observation concerning how the Slavs treated a person violating the peace of hospitality: "it is lawful (*licitum est*) to burn his house and property. They all, likewise, vow and declare that he who does not fear to deny bread is shameful (*inglorious*), vile, and to be abominated by all" (*ab omnibus exsibilandum*; but in two manuscripts it was written: *ab omnibus exiliandum*, which means exile).[465]

Helmold described the situation of an exile in terms of moral repulsion, but in a traditional society there was no difference between widespread condemnation and the law. The unpunished burning of someone's house was only possible in a situation when the master of the house had no legal status and protection. The state of dishonor (*ingloria*) was equivalent to being deprived of peace. The Germanic peoples used one word to refer to both: *unhelgi*. Lastly, the unanimous opinion that everyone should chase away the exile finds an equivalent in the norms of the Salic law that forbade one to offer an exile hospitality or to give him bread.

In the Salic law, exile was the king's and not the community's prerogative. According to title LVI, exile was used as repression for the persistent failure to appear in court. If the culprit also disregarded a summons to appear before the king (thus in a situation analogous to that from chapter 8 of the *Saxon Capitulary*), "then the king before whom he was summoned shall place him outside his protection [outside the law – *rex* (…) *extra sermonem suum ponat eum*]. The guilty man and all his property will then belong to the fisc or to him to whom the fisc gives it. And whoever feeds him or gives him hospitality, even though it be his own wife, shall be liable to pay fifteen solidi until he has paid composition according to law

464 Poppe, *Potok*, column 252.

465 Helmold, I, 83, p. 159.

for all those things legally charged against him." The same repression was used, according to title LV, paragraph 2, in relation to a person guilty of plundering a grave. This time, however, the codifier used the traditional Germanic term: the one guilty of this sacrilegious crime "shall be a wolf (*wargus sit*) until that day when it is agreeable to the relatives of the dead person and they ask on his behalf that he be permitted to come among men again. And that one who, before composition has been paid to the relatives, gives him bread or hospitality, whether it be his parents or his wife or any other relative who does it, shall be liable to pay fifteen solidi." The wergild that the culprit had to pay to the relatives of the dead person was two hundred solidi.

There have been many disputes about the meaning of the words *wargus sit*. There has been a flight from the murky Germanic mythology abused by the Third Reich. Instead of a "wolf" (Scandinavian *vargar*), some scholars see in title LV simply a man convicted by the court. In Charles the Great's *Saxon Capitulary* – to avoid reaching far – *wargida* means precisely a "verdict." Yet in Carolingian times, the learned copyists of the Salic law added a Latin explanation to title LVI: *wargus id est expellis* (that is an exile, an outlaw). And even without this gloss, it is clear that the prohibition to give hospitality and bread to such a man, as well as the request to allow him "to come among men again" could only concern an exile and not any other convict. *Wargus*, therefore, is someone excluded from the community, exiled from among people. There is no place for him in anyone's house because his only house is the forest. We need to agree with Ekkehard Kaufmann's view; *wargus* is a wolf, or, which amounts to the same thing – a man of the forest.[466]

The Frankish *wargus* could buy off his exile by paying two hundred solidi to the relatives for the profanation of the grave and the body, that is, an amount equivalent to the wergild of a free Frank. The situation was similar among the Lutici; he who openly resisted the implementation of the assembly's decision could save his house from burning and his property from plunder, and remain among his people if "in their presence," that is, at the assembly, he paid an amount adequate to his quality (*pro qualitate sua pecuniae persolvit quantitatem debitae*). We know the expression "adequate to the quality of the person" from the laws of the Burgundians

466 Kaufmann, "Zur Lehre von Fiedlosigkeit," pp. 349–362. Nehlsen holds a different view; see his "Der Grabfrevel;" see also von Unruh, "Wargus;" Aquist, *Frieden*, p. 283; Jacoby, *Wargus*, pp. 62–68 and 96f.; Schmidt-Wiegand, "Wargus." According to the law of Edward the Confessor (Liebermann, GA, vol. I, p. 631) an exile "wears a wolf's head from the day he is exiled on, which the Angles call *uulfeshaed*" (*Lupinum enim gerit caput a die utlagationis sue, quod ab Anglis uulfeseaed nominatur*).

and Lombards. What it meant there was an estimation of one's worth according to one's social status. In Rothari's edict, this principle was written in its original, Germanic version: *in angargathungi*. This notion was, as can be seen, also known to Thietmar. He recognized this practice in the customs of the Lutici and described it adequately; at the assembly, the culprit paid an amount equivalent to his own wergild, that is, the price of his head. He who went against his native community, had to pay for his own throat or roam the forests like a wolf.

The fact that the Lutici rebel paid the wergild for his deed at the assembly ("in their presence," with the pronoun "their" in this sentence referring to the fellow tribesmen of the assembly), indicates that a certain procedure was observed. The setting of his house afire and the plunder were not the lawless, spontaneous reaction of fellow tribesmen to anarchic behavior. Among the Franks, the king himself placed the criminal "beyond his word." Among the Lutici, the assembly did this. Yet some time had to pass between the political decision of the assembly, the realization of which the "rebel" had ostentatiously sabotaged, and the next assembly where he could pay the wergild for his deed. It was only at a second assembly that a decision about exile could be made. It was a decision which made the burning of the culprit's house and the plundering of his property legal. The *Saxon Capitulary* speaks of such an event unambiguously: first the "inhabitants of the district" had to gather at the assembly and give a unanimous consent, in accordance with the ancient law of the Saxons, to the burning. Only after that were they allowed to set fire to the house of the "rebel." The decision of the assembly in this matter, a decision which amounted to the imposition of exile, bears all the signs of a court verdict.

The requirement of unanimity was binding, as is clearly suggested by Thietmar's formulation, in the case of all decisions of the assembly, and not only in the case of passing a judgment. Lack of objection was requisite to arriving at a decision. The unrelated and independent evidence found in the 797 *Capitulary* and Thietmar's chronicle are unanimous in this respect. This was a common principle: it obtained both at the modest assembly of the community of neighbors and at the assembly of the federation of tribes among the Germanic and Slavic peoples. The references made by a variety of sources to the unanimity of the assemblies give the impression of threadbare clichés, but the Polish medievalist Piotr Boroń is inclined to see them not simply as a literary stereotype and is of the opinion that "emphasizing unanimity probably means informing others about the legal validity of the decisions made."[467]

467 Boroń, *Słowiańskie wiece*, p. 84.

This does not mean that anything resembling contemporary voting was held at the assemblies. The assembly ritual was, so it seems, simply based on the assumption of unanimity, unless someone upset the common consent with an open and loud objection. This hindered making decisions. That is why the Lutici attempted, with rods, to convince an opponent to change his mind at the tribal assembly.

As can be seen, the requirement of unanimity did not stem from respect for an individual's opposing view. It rather expressed the overwhelming pressure exerted on an individual by a community which was unable to act when differing views appeared. It seems that Thietmar understood this. Similarly to Procopius of Caesarea writing about the Antes, Thietmar noted something both interesting and strange to the civilized observer: the Lutici have no ruler. In order to explain how, despite this fact, they managed to make and implement decisions, Thietmar examined how the mechanism of the assembly worked. He logically linked the unanimity of the assembly decisions (*unanimi consilio in placito suimet necessaria discucientes*) with common unanimity of action when these decisions were implemented (*in rebus eficiendis omnes concordant*). Common consent was a condition for efficacy, because the tribal organization, unlike the state, did not have any administrative instruments of coercion.

In the tribal political system, social integration was based on ethnic, neighborly, and familial bonds. It was also based on common cult, rigorous collectivism, and the power of tradition. It also rested on coercion. It was at times a drastic coercion, even cruel, but not administrative. The implementation of the political or judicial decisions made by the assembly at times met with opposition that had to be overcome. In such a situation, people resorted to the only repressive measure available: collective feud. This could only be carried out by a close-knit community. It was not by accident that the editor of the *Saxon Capitulary* drew on the ancient, unwritten law of the Saxons (*ewa Saxonum*) and emphasized so strongly that the neighbors, before they set fire to the rebel's house, had to gather at the assembly and unanimously agree to use this sanction. Without unanimity, solemnly expressed, repression could easily turn into a simple act of violence and trigger a spiral of revenge. This same measure of repression, when decreed by everyone, bar none, was seen differently; it was the united revenge of the entire community on the "black sheep." Coercion was effective in this society because it was based on the collective principle of "all against one." It had to be clear that all the people turned against the rebelling individual. Unanimity was thus a condition of any decision made by the assembly whose implementation called for the use of coercion.

The requirement of unanimity thus finds a functional explanation, one that verges on social engineering, and is thus surely insufficient. The traditional culture of the barbarians obviously had its own internal rationale, yet it was far from

what we would call rationalism or pragmatism. We need to search for other reasons why this unanimity was considered an indispensible principle. We should also take a closer look at how the common will was expressed at the assembly. This we find primarily in Tacitus.

Tacitus devoted the entirety of chapter 11 and a substantial part of chapter 12 to the proceedings of the tribal assemblies.

> The leading men take counsel over minor issues, the major ones involve them all; yet even those decisions that lie with the commons are considered in advance by the chiefs. Unless something unexpected suddenly occurs, they gather on set days, when the moon is either new or full, because this they regard as the most auspicious time to begin their business. They reckon time not by days, like us, but by nights: in this way they make their appointments and in this way they set their days, since to them the night seems to bring on the day. […] When it pleases the crowd, they take their seats armed. At the command of the priests there is silence, since at this time too they [the priests – K.M.] have the right of enforcement. Then, according to his age, birth, military distinction, and eloquence, the king or leading man is given a hearing, more through his influence in persuasion than his power in command. If his views are ill received, the men reject them with a roar; if well received, they clash their *frameae*: the most honorable sort of approbation is to applaud with arms.

This is a veritable goldmine of information. What we have here is, above all, a detailed and reliable description of how assembly decisions were made. The shaking of spears as a way of expressing approval at the assembly is nothing other than the *vapnaták* (expressing approval with weapons) that we know from the Scandinavian and Anglo-Saxon sources. The Lombard term *gairethinx* (*gaire* – spear; *thing* – assembly) is probably linked with that ritual gesture. It most often meant a legally binding, publicly performed gift, but Rothari's edict, as we learn from the epilogue to that codification, was announced at the assembly where it was proclaimed to be "issued and confirmed by the *gairethinx* according to the usage of our nation, let this be strong and stable law" (*per gairethinx secundum ritus gentis nostrae confirmantes, ut sit haec lex firma et stabelis*).[468]

We find traces of the same ritual among the Slavic peoples. In August 1128, at the beginning of his second mission to the Pomeranians, St. Otto of Bamberg spoke at the assembly in Szczecin. His speech was interrupted by a pagan priest (*pontifex idolorum*) who hit a stick against a pole on the assembly step, ordered silence (*silentium mandat*), and addressed the crowd with these words: "Here is your enemy and the enemy of your gods. What are you waiting for? Will you

468 LL, Ro, chapter 386, p. 102. For the etymology of the term *gairethinx*, see Frankovich-Onesti, *Vestigia*, p. 90.

bear disdain and harm without punishment? All came there armed with spears" (*omnes autem incedebant hastati*). Incited by the priest's words, the participants of the assembly "at his command raise their spears, which are already shaking ready to be thrown […]" (*ad dicentis vocem inflammati hastas levant. Quos dum ad iacendum vibrant*). But they were not thrown. According to the unanimous account of three hagiographers, a miracle occurred: the shaking spears froze in the raised hands of the pagans, and the missionary was left unharmed.[469]

Hagiography needs miracles, and the incident at the Szczecin assembly described similarly by Wolfger, Ebon, and Herbord does not appear to be a devout confabulation. We can, however, assume that the German clergy misunderstood the behaviors and intentions of the pagan Pomeranians. Raising and shaking their spears, the gathered inhabitants of Szczecin did not by any means intend to throw their lethal weapons at Otto. It was obviously not a friendly gesture towards the saint, but rather an expression of approval for the words of the pagan priest. We do not quite know what the priest really suggested, but he certainly did not call upon them to immediately kill the missionary at the assembly, a site which was protected by the sacred peace. From the point of view of the aims of the mission, the balance of that event was probably less beneficial than the account of the life of the saint puts it. We cannot say more, because we only have the account of one of the parties who, moreover, did not understand the other.

When it comes to the customary manner of expressing disapproval, we can evoke the story told by Cosmas of Prague about elevating Lanczon, Vratislaus II's chaplain, to the position of bishop of Prague. This was a controversial candidature, forced by Vratislaus who, all the more, made sure that the assembly tradition was observed: "He gathered the people and the nobles at the assembly and having his brothers on the right and on the left, and the clergy and the *comites* sitting in a circle with all warriors standing behind them," called Lanczon to the middle and in laudatory terms introduced him as a new bishop. Upon this, however, "murmurs rose among the people and no words of congratulations were spoken which, according to custom, are offered on the occasion of a bishop's elections" (*fit murmur in populis, nec resonat vox congratulationis, sicut semper solet in tempore episcopalis electionis*).[470] These were no longer tribal times, so the duke disregarded the voice of the people which led to disorder in the state. The people's murmuring no longer had any determinative power, yet it still remained a traditional form of the assembly's disapproval, just as shaking the spears meant the approval of the decision.

469 Herbord, III, 18, p. 179f.; see also VP, III, 8 and Ebo, III, 16.

470 Cosmas, II, 23, p. 115.

Neither a shaking of the weapons nor a choir of grumbling make it possible to count votes. No one would have intended to count them, anyway. This was not a vote but an acclamation. This was how the people as a body, rather than as individuals expressed opinion. It was assumed that a folk is by nature unanimous, and that this unanimity was conveyed through an act of collective expression. However, if any rift occurred, it was impossible to make a decision. It could be blocked even by a single individual loud objection. And that would be a bad omen for the planned actions.

Omen and prophecy are indeed the most suitable words here. The requirement of unanimity among those gathered at the assembly can be explained functionally, in pragmatic terms, yet for the barbarians it no doubt had a supernatural significance. The otherwise level-headed Tacitus understood this well. Or, at any rate, he did not miss the details indicating the sacred dimension of the Germanic tribal assemblies. He noted that the proceedings at the assembly were always opened by priests, that they commanded silence among the gathered people, and that "then," that is, at the time of the meeting, only the priests had the right to use coercion (*quibus tum et coercendi ius est*). Because the priests acted as its guardians, we can conclude that the peace of the assembly was a sacred one.

In chapter 7, Tacitus deciphered the significance that the Germanic peoples themselves gave to this: "Kings they choose for their birth, generals [*duces*, i.e., commanders] for their valor. But the kings do not have unlimited power without restriction, while the generals lead more by example than command; if they are energetic and seen by all, if they are active in the front ranks, their men look up to them. But no one is allowed to punish or bind or even flog the soldiers except the priests: and not as a penalty or on the general's orders, but as though by command of the god who, as they believe, supports them in war (*non quasi in poenam nec ducis iussu, sed velut deo imperante, quem adesse bellantibus credunt*). From their sacred groves they remove certain images and symbols that they carry into battle." (*effigiesque et signa quaedam detracta lucis in proelium ferunt*).

The power to punish mentioned here was not permitted to the priests always and everywhere, but only under special circumstances. In chapter 11 of *Germania*, Tacitus states explicitly: they have the right to use coercion "then," that is, at the assembly. In chapter 7, a similar conclusion is suggested by the context. The general commands obedience by example and by bravery in battle, but even he is not allowed to punish. This right belongs only to the priests. They punish at the god's command and not the general's. This god, they believe, is at the side of the warriors in battle. This is why the Germanic peoples, when going to war, take the religious emblems from the sacred groves and carry them to battle as banners. This context leaves no doubt: the authority to use repression mentioned here was permitted to

the priests at the time of a war expedition, just as it was permitted to them at the assembly.

Tacitus was not mistaken. According to title XVII, paragraph 1, of the Frisian law, "If someone at a military practice puts up a quarrel, he must pay nine fold the damage that he caused, and he pays to the king nine times his *fredus*." What we are dealing with here is similar to that peace which at the assembly guaranteed safety even to the criminal pursued on account of blood feud by legitimate avengers. "*Homo faidosus*," the first title of the so-called *Additions of the Wise Men* proclaimed, "must have peace at the assembly [*in placito*], and the avengers, if they kill him there, pay a ninefold of 30 solidi," that is, ninefold *fredus* for murder. A specific sort of peace and order was required both when at war and at the assembly, and it is to these special circumstances that the references to the priests' special jurisdiction in chapters 7 and 11 of *Germania* refer. Tacitus, however, revealed something more: this peace was sacred. Violation of that peace was a sacrilege. This is why it was punished by the priests on behalf of the god who accompanied the warriors going to war, or who was present at a meeting of the assembly.

Did the same god keep them under his protection both at war and at the assembly? Two Latin inscriptions carved during the reign of Caesar Alexander Severus (222–235) on Hadrian's wall near Houseteads seem to confirm this. The first, dedicated "to the god Mars Thingsus" (*Deo Marti Thingso*), and the second, simply to Mars, were inscribed by Germanic warriors who had remained in Roman service from the Twente district in Frisia (*cives Tuihanti cunei Frisiorum*). Jan de Vries has convincingly argued that the Germanic war god Tiwaz lies behind the Roman name Mars, and the nickname Thingsus derives from the Germanic term *thing* (assembly). Thus, the inscription reflected the reverence that the Frisian troops stationed in Brittany held for a god whose purview included both war and the assembly.[471]

Some scholars question the association of Mars with Tiwaz and the assembly; Thingsus could thus mean the god of heavens and lightning, that is, Donar (Thor).[472] I will not explore here the complexity of the Germanic pantheon and its historical transformations. I do not intend to argue Tiwaz's case, but the conviction that Thor had nothing to do with the assembly is simply wrong. According to the reliable tradition written down by Adam of Bremen (Book II, chapter 62) in 1030, the Anglo-Saxon missionary Wolfred died a martyr's death in Sweden

471 de Vries, *Altgermanische Religionsgeschichte*, vol. II, pp. 11–14.

472 Especially von See, *Kontinuitätstheorie*, pp. 12–18.

for daring to chop with an axe the "idol named Thor which stood in the Thing of the pagans" (*ydolum gentis nomine Thor stans in concilio paganorum*). The god accompanied the warriors at the assembly not only in spirit but also in body; he was present at the site of the assembly in the form of a sculpted figure. The place of the assembly was thus also a place of cult.

This link is represented explicitly in Helmold's account about the tribal sanctuary of the Wagri. In the first days of 1156, Gerold, bishop of Oldenburg, in the company of his brother Conrad, abbot of the Ridagshausen abbey, and Helmold, went for the first time to his diocese. In fact, Gerold was then a bishop *in partibus infidelium*. The Wagri, like other tribes of the Obotrite federation, had triumphantly returned to paganism after a victorious uprising in 1066. The work of Christianization, only just begun under the reign of Duke Gottschalk and overthrown in that uprising, had been thwarted and had to be undertaken again after more than eighty years. Gerold's predecessor, Vicelin, consecrated in September 1149 as bishop of Wagria, the following winter "visited Oldenburg, where there had once been an episcopal see, and the barbarian inhabitants of that country, whose god was Prove, received him. The name of the priest [*flamen*] who presided over their superstition was Mike. The prince of that land was called Rochel, who was of the seed of Cruto, an eminent idolater and pirate. The bishop of God began, therefore, to declare to the barbarians the way of truth, which is Christ, exhorting them to give up their idols and hasten to the washing of regeneration. But few of the Slavs joined the faith […]. The bishop [Vicelin], however, gave woodcutters money for the erection of a sanctuary, and a building was started near the wall of the old stronghold […]."[473]

That building was probably the only trace of Vicelin's activity when Gerold, together with Conrad and Helmold, arrived in Oldenburg on January 6, 1156. Amidst the snowdrifts, they celebrated Epiphany in an unused church after which Pribislav, duke of the Wagri and then still a pagan, received them with a feast at his court. We read:

> After staying that night and the following day and night with the ruler, we crossed into further Slavia to be the guests of an influential man, Thessemar, who had invited us. It happened that on our journey we came into a forest, which is the only one in that country for it all stretches out in a plain. Among very old trees we saw there the sacred oaks which had been consecrated to the god of that land, Prove. There was a courtyard (*atrium*) about them and a fence very carefully constructed of wood and having two gates. For, besides the household gods (*penates*) and the [local] idols with which each village abounded, that place was the sanctuary of the whole land for which a *flamen* and

473 Helmold, I, 69, p. 134.

feast days and a variety of sacrificial rites had been appointed. Every Monday the people of the land were wont to assemble there for holding court with the ruler and with the *flamen* (*populus terrae cum regulo et flamine solebant convenire propter iudicia*). Entrance to this courtyard was forbidden to all, except only to the priest and to those wishing to make sacrifices, or to those in danger of death, because they were never to be denied asylum. For the Slavs show such reverence for their holy things that they do not allow the neighborhood of a fane to be defiled by blood, even an enemy's blood. […].

When we came to that wood and place of profanation, the bishop exhorted us to proceed energetically to the destruction of the grove. Leaping from his horse, he himself with his staff broke into pieces the decorated fronts of the gates and, entering the courtyard, we heaped up all the hedging of the enclosure about those sacred trees and made a pyre of the heap of wood by setting fire to it, not, however, without fear that perchance we might be overwhelmed in a tumult of the inhabitants. But we were protected by heaven.[474]

This is very likely the only eyewitness description in medieval literature of a pagan sanctuary and assembly place. Helmold not only was there, but also personally had a hand in the destruction of the holy place of the Wagri. He feared for his life at the time, and according to his account, that fear did not subside even after ten years. The reliability of this account seems indisputable. Yet it has been questioned. Aleksander Brückner has argued that Helmold, who did not know the language of the Slavs, mistook the word "*prawo*" (in Polish, "law") with the name of the god Prove ("*Prowe*") and mistakenly took the place where "judicial and legal assemblies" were held for a sanctuary. In this respect no one has rivaled Brückner's hypercriticism, but the idea that the chronicler mistook the word "*prawo*" for the name of the god found its followers. Edwin Wiencke took it up and did whatever he could and even more to refute the evidence of the sources about pagan sanctuaries and the gods of the Slavs. With respect to the name Prove, Stanisław Urbańczyk shared Brückner's scepticism. So did even Henryk Łowmiański, otherwise convinced that the assembly and the cult were usually held in the same place.[475]

At the time he was describing the sanctuary of Prove, Helmold had for nearly ten years been parish priest in Wagrian Bozów, and it is hard to imagine that he did not know the language of his parishioners. The scholars' scepticism was aroused by the chronicler's information that the assemblies in the forest sanctuary of the Wagri were purportedly held every Monday (*omni secunda feria*). "A misunderstanding worthy of Helmold!" – Brückner trumpeted, and in this respect he was

474 Helmold, I, 84, p. 159f.

475 Brückner, *Mitologia*, p. 200; Wienecke, *Untersuchungen*, pp. 37–41; Urbańczyk, *Prowe*, SSS, vol. IV, column 368; Łowmiański, *Religia Słowian*, p. 183.

right. The weekly calculation of time was not known to the pagan Slavs.[476] There is no doubt that Helmold misunderstood his Wagrian informant. Yet, when two people of two different cultures are unable to understand each other with respect to the category of time, and additionally regarding the time of the assemblies, a historian should not necessarily disqualify the source. He should lean in to get a closer look at the misunderstanding, because its deciphering can sometimes yield brilliant information.

In my view, Tacitus's information about when the tribal assemblies among the Germanic peoples were held (either at the new or full moon) offers the key to the riddle. The assemblies were general gatherings of free fellow tribesmen, so each of them must have known where and when they should go. There was no problem with the place – it was fixed and commonly known. But it was equally important that everyone knew how to recognize the right day. The Germanic term *thing* is derived from the Indo-European word *tenkos* or "time." It obviously meant a time fixed in advance, and this meant the day of the assembly.[477] The Slavic expression "*roki sądowe*" (court "years," or dates) had a similar conceptual meaning. People had to know when the right time was according to the only calendar that an illiterate society had at its disposal: the one visible in the night sky. Orientation by the new or full moon was the only practicable way for a substantial number of people living in various places to meet regularly at a given place.

This practical reason, that is, an effective technique of communication with regard to time, was not the only important thing here. For the barbarians, the sky meant much more than our calendar-clocks mean to us. With perspicacity worthy of an ethnographer, Tacitus also noted the magic and mythological background of the time when the assemblies were held. The Germanic peoples believe, he wrote, that new and full moon are also "the most auspicious time to begin their business" – *auspicatissimum initium agendis rebus*. The Slavs also believed this. As late as at the beginning of the 20th century, it was a common habit to sow "at full moon" or "at new moon," and also to hold weddings at this time out of the conviction that doing so would ensure better crops and prosperity for the married couple.[478] In the Germanic customary laws, the interval between the *centena* assembly and other judicial dates was determined in exactly the way that Tacitus

476 Matuszewski, *Słowiański tydzień*.
477 Kaufmann, *Ding*, HRG, vol. I, columns 742–744.
478 Moszyński, *Kultura ludowa*, pp. 140f. and 452–457.

described: the number of nights. The same nightly, that is, lunar calculation can also be found in the oldest written Polish law (ca. 1270).[479]

There is no reason to doubt that the times for the Wagrian assemblies in the grove of the god Prove were also calculated according to the moon. Taking this into consideration, it is not so difficult to decipher the misunderstanding. Helmold's Slavic informant probably said that the assemblies were held on "moon" days. Helmold wrote in Latin, but thought in German, so he literally translated in his mind what he heard in his mother tongue: day of the moon, or *Montag*, which is Monday. This is how the misunderstanding may have arisen, and as a result of which the chronicler wrote down in proper church Latin: "every Monday" – *omni secunda feria*.[480]

Helmold did not have any direct contact with Tacitus's work. He only knew, via Adam of Bremen, those parts of *Germania* that Rudolf of Fulda used in the introductory part of *Translatio sancti Alexandri*. In this compilation, not a single word is said about the assemblies. Rudolf omitted chapters 11 and 12 and only mentioned the superstitious belief of the pagan Saxons that the new and full moon supposedly constituted the best prophecy for the prosperity of undertaken activities.[481] This information came from Tacitus, yet it was Rudolf of Fulda's and Adam of Bremen's version that reached Helmold. This information was taken from its original context and stripped of any relation to the dates of the tribal assemblies. The author of the *Chronicle of the Slavs* could not have possibly associated what he had heard about the dates of the Wagrian assemblies with any book knowledge. It was all the more easy for him to fall victim to misunderstanding. Yet this misunderstanding is of the best sort – because it unintentionally yields evidence that Tacitus's observation was also true in the Slavic world, unknown to the Roman historian.

Helmold's credibility emerges unscathed from this trial. His account reveals, to put it most broadly, an organic relationship between the cult and political institutions of the tribe. The sanctuary of Prove, destroyed by Helmold and his

479 LA1, title XXXVI, and also, for example, PLS, title XL, 7–10; see also NZ, V, 2, 4 and 12, pp. 161 and 165.

480 Modzelewski, "Omni secunda feria" and, more extensively, "Culte et justice." The Sunday market in Płonia, mentioned by Helmold (I, 95, p. 186), was already an offshoot of Christianization; trade was conducted when people gathered for church ceremonies. Bishop Gerold banned it because "the Christian people attended only to the business of marketing, to the neglect of the service of the Church and the solemnities of the Mass."

481 TSA, chapter 2, p. 675; Adam of Bremen, I, 8.

entourage, was a "sanctuary of the whole land" (*sanctimonium universae terrae*) and at the same time the place where the people of the Wagrian country met at the assemblies. The duke of the tribe and the priest were the most important figures at those assemblies. Helmold does not mention explicitly, as Tacitus does, that the priest opened the assembly, ordered silence, and kept peace during the proceedings, but the detailed description of the topography of the assembly place allows us to formulate a couple of conclusions.

The assemblies were held in a glade surrounded by a palisade with carved gates and with a sacred object – the oak trees of Prove – at the center of the fenced space. Helmold states emphatically that only those who intended to offer sacrifice were allowed to enter. At the same time, the chronicler tells us that it was there (*illic*) that the assemblies were held. The gathered people would not have stood outside the fence, because that would have made communication among them difficult or even impossible. The word *illic* should be understood literally; the assembly was held "therein," that is, within the sanctuary, on the fenced terrain where only those making sacrifice were allowed. What follows from this is that the proceedings were preceded by a collective ritual of sacrifice. The duke and the gathered people were its participants. The priest, on the other hand, was the master of ceremonies. It is thus obvious that the first word was his.

Apart from the participants of the assembly and those who came to offer sacrifice, fugitives seeking refuge from immediate mortal danger were also allowed to enter. There they found asylum because within the sanctuary even killing an enemy was not allowed. Of course, this would not have been an external enemy or invader, but a criminal burdened with the blood feud. He was pursued by legitimate avengers, but on the fenced terrain around the oak trees of Prove they could not take revenge because everyone there was protected by the sacred peace. This was a situation identical to that in title I of the Frisian *Additions of the Wise Men*. *Homo faidosus* was protected by peace in his own house, at the assembly, and at church. The glade of Prove was both a site of the assembly and a temple. What was at stake was sacred peace, so we should assume that it was guarded by the priest present at the assembly. It is from this point of view that we need to look at the function of the palisade surrounding the glade. It was a decorative construction rather than a defensive one. The carved facades of the gates crumbled under Gerold's blows. Bishop Gerold, Abbot Conrad, and Helmold himself, most probably with the help of servants that accompanied them, took down the entire fence within a few hours. This shows that the palisade served magic and cult rather than military purposes. It demarcated the scope of the sacred space where peace obtained. The hazel and alder tree pickets twined with rope in the places where the modest Saxon *godings* gathered served similar purposes.

Herbord's account about the Pirissani and *Vita Lebuini antiqua* also tell us about pagan rituals taking place before the proceedings of the assemblies. The Pirissani were already mentioned in the *Bavarian Geographer*, ascribing as many as 70 local castles (*civitates*) to them. In June 1124 when Otto of Bamberg's missionary expedition arrived there, the Pirissani elders recognized the authority of the West-Pomeranian duke Wartislaw I. Approaching the "ducal castle of Pyrzyce," the participants of the mission saw "as many as 4 thousand people from the entire province […]. This was because it was some pagan feast (*nescio quis festus dies paganorum*) which the raging crowd celebrated with play, frolic, and song." The missionaries did not decide to approach the celebrating crowd, but they spent a sleepless night in its vicinity without making fire or daring to speak loudly. On the following day, they sent Pawlik, the Santok castellan, and Duke Wartislaw I's envoys who had accompanied Otto ahead to the castle. They informed the local elders (*maiores*) of the bishop's arrival and demanded on behalf of the dukes, that is, on behalf of Wrymouth and Wartislaw I, that Otto be allowed to preach the Christian faith. The Pirissani *maiores* first tried to play for time, but with their backs against the wall, they did not dare to refuse: "First they considered the matter carefully amongst themselves, in private [*in conclave*, i.e., in a closed room], where they made a good and salutary decision. Next, in order to make it binding, they had it affirmed at a bigger assembly going out from the closed room, together with the envoys and Pawlik, to meet the people […]." For the people "[…] just as they gathered for celebration, remained gathered, by God's will, at the place and did not disperse, as usual, to their villages" (*sententiam tam bonam quam salubrem diligenti retractacione probaverant – primo quidem apud se in conclavi, deinde vero cum legatis et Paulicio ad plenum vigorem laxiori consilio firmaverant – cum eisdem ad populum egressi, qui sicut ad festum confluxerat, contra morem indispersus Dei nutu in loco manebat*). The leaders of the Pirissani addressed their fellow tribesmen in a soft way, in a clear and sweet speech (*luculenti sermonis dulcedine*). The missionaries found it admirable how easily and quickly "the multitude of people, after hearing the words of their leaders, came to be inclined to grant consent" (*Mirum dictu quam subito, quam facili consensu omnis illa multitudo populi auditis primatum verbis in eandem sese convenienciam inclinaverit*).[482]

482 Herbord, II, 14, pp. 84–86. The credibility of the sources has been questioned by Zernack (*Die burgstädtische Versammlungen*, p. 225f.), while Łowmiański (*Początki Polski*, vol. IV, p. 93f.), Labuda ("Wczesnośredniowieczne wiece," pp. 913–920) and Leciejewicz (*Słowianie*, p. 220) have in turn questioned Zernack's critique.

The similarity between the story told by Herbord and chapter 11 of *Germania* is inescapable. It is not a result of borrowings. Herbord did not have an opportunity to know Tacitus's text about the Germanic assemblies. What we have here is a similarity of content but not form. Not a single word about the Pirissani could have been taken from the Roman historian, yet the whole seems a vivid illustration of Tacitus's story. The matter at hand is serious, so a binding decision must be made by "all the people." But first, the matter is discussed by the elders alone. At the assembly, the leaders win obedience with their skill at persuasion and not by command. Tacitus's informants noticed the same things that Herbord's informants did because they were dealing with a similar reality and they perceived it from a similar perspective. Apart from that, however, Herbord's account indicates a relation between the assembly and a cult ceremony, linked with the consumption of animals sacrificed to gods at a collective ritual feast (*żertwa*). The hagiographer, hungry for miracles and dispensation, deemed what in fact must have been a customary norm the result of godly intervention. The people who had gathered for the feast remained at that place waiting for the assembly to commence.

Herbord's information about "some pagan feast" seems to indicate that he meant an annual gathering. The assemblies that Helmold wrote about were held more often; not every Monday, however, as the chronicler believed, but probably every month (lunar month). The farthest-reaching similarity links Helmold's story with chapter 6 of *Vita Lebuini*, where the course of the annual tribal assembly of the Saxons at Marklo upon Weser is described in rich detail.

The so-called *Vita Lebuini antiqua* is a compilation. Between 840 and 864, an anonymous hagiographer combined the fragments from the lives of Abbot Gregory of Utrecht and Bishop Liutger that mention Lebuin's missionary activity with another unknown text that Martin Lintzel has called the "lost source," or *Vita Lebuini I*. Unlike his predecessors, who had mainly examined the time when the compilation came into being, Lintzel rightly takes note that the "lost source" is older than the compilation itself and merits particular attention because it contains the core of the hagiographic tradition and some invaluable information about the political system of the Saxons.[483] The credibility of this information depends on when and under what circumstances the original text of the "lost source" came into being. The answer to that important question must be based on an analysis of the text of that source conveyed by the compiler.

483 Lintzel, "Die Vita Lebuini;" see also Hofmeister, "Über die älteste Vita Lebuini" and Löwe, "Entstehungzeit und Quellenwert."

Lebuin arrived on the continent from England in 770, and was sent to do priestly and missionary work on the Franco-Frisian-Saxon borderlands.

> From time to time he went into Saxony to see if he could gain souls to God, and he persuaded many to accept the faith of Christ. Among his friends and acquaintances were people of the nobility, one of whom was a rich man named Folcbert who lived in the district of Sudergo.

At this point, the hagiographer stops the narration in order to explain to the readers that the Saxons did not have a king, but held an assembly at Marklo once a year where the representatives of all the districts gathered and "confirmed the laws, gave judgement on outstanding cases," and also made decisions about war and peace. After this indispensible explanation, the narrator resumes the telling:

> Folcbert, whom we have already mentioned, had a son named Helco, who was to set out with the other youths for the meeting. One morning, whilst he was speaking to his son, he said, among other things: "I feel anxious about Wine" – for this is what he used to call Lebuin – "and I am afraid that if he meets with those who hate him they will either kill him or drag him to the meeting place and have him killed there." Whilst he was still speaking, the dogs began barking in the hall and growling at someone coming in. The young man Helco went to the door to see who it was and there he found Lebuin trying to ward off the dogs with his stick. He ran up to him and, driving the dogs away, brought him with joy to his father. After they had greeted each other and sat down, Folcbert said to the man of God: "You have just come at the right time, my dear Wine, for I was wanting to see you and have a few words with you. Where do you intend to go now?" The man of God said: "I am going to the meeting of the Saxons." Folcbert said: "You are on friendly terms with many of us, dear Wine, and what you say gives pleasure even to me. But I hear that there are many insolent young fellows who insult and threaten you. Listen to me and be on your guard against them. Do not go to the meeting, but return home to your friend Davo. For once the meeting is over you may go about with less danger and then you can come here in safety and we shall listen to your words with very great pleasure." The man of God replied: "I must not fail to be present at this meeting, for Christ himself has commanded me to make known his words to the Saxons." Folcbert said: "You will not get away." He answered: "I shall escape easily enough, for He who sent me will be my aid." Since he could not persuade him, he sent him away.[484]

This story demonstrates the edifying determination of the missionary, and in this sense is germane to the saint's life. It is the proportions that matter here. The cited passage and the description of the events at the assembly that follow it take up the major part of the compilation. The "lost source," in fact, boils down to the conversation at Folcbert's house and the account of the assembly. Lebuin still lived on for

484 VLA, chapters 3 and 5, p. 792.

a few good years after these events. He died a natural death in Deventer around 780. The incident at Marklo ended happily. The assembly even decided to give him the freedom and safety to travel in Saxony (this was equivalent to affirming the peace of hospitality). But the "lost source" summarizes the missionary's further activity with one curt sentence: "St. Lebuin, therefore, went about wherever the Spirit of God led him, persevering in the work of God until he gave back his soul to its Creator." Given that this is a hagiographic work, the traditional motif is unusually meager here, but simultaneously extremely rich in detail.

Let us note that that all these details have a common denominator. There is no information here that would be unknown to Folcbert and his son Helco. What is more, some information was significant only to them and was even known only to them. Only those two knew what they spoke about before Lebuin came to them. The subsequent part of the conversation was also known to Lebuin, but the life of the saint was, after all, written down at a time when its protagonist could no longer say anything. The exchange demonstrating the saint's determination could only have been related by Folcbert and Helco or by one of them. The information that Folcbert called Lebuin the diminutive name Wine may have had an emotional significance to Folcbert. It may also have indicated his personal intimacy with "the man of God," but it contributed nothing to the point about Lebuin's sainthood. The fact that Helco, together with other young men from Sudergo, was appointed to participate in the general assembly and had to go there was significant for the hagiography for only one, yet important, reason: he was a witness to Lebuin's speech at Marklo and to the events related to this speech. Our source speaks only of what fell within the field of vision of Folcbert or his son and takes their viewpoint. It is difficult to resist the impression that it was Helco, and perhaps also his father, who was the narrator of the "lost source."

For this is how it most probably was. The "lost source" is an account, written in the hagiographic tradition, of what Folcbert and Helco may have said about Lebuin. It is impossible to explain the peculiarity of this source in any other way. It was most probably written at the end of the 8th or in the first years of the 9th century at the latest. The longevity of the narrators naturally marked the chronological boundaries of the account. What seems more important than its chronology is the fact that it is first-hand evidence. We must, obviously, take into account the possible misunderstandings between the narrator and the priest who wrote down his words. The characteristics of the political system of the Saxons and the role of the national assembly (chapter 4), discussed repeatedly, may be tainted by misunderstandings. Despite this, the account of the assembly where Lebuin spoke (chapter 6), an account that is unparalleled in its richness of details, merits belief. This is the only evidence given by a barbarian who was a

participant and not merely an observer of the assembly that we have in medieval literature. It is worthy of a closer examination.

> When the day of the meeting came round, all the leaders were present, as were others whose duty it was to attend. Then, when they had gathered together, they first offered up prayers to their gods, as is their custom, asking them to protect their country and to guide them in making decrees both useful to themselves and pleasing to all the gods (*fecerunt iuxta ritum in primis supplicationem ad deos, postulantes tuitionem deorum patriae suae, et ut possent in ipso conventu statuere sibi utilia et quae forent placita omnibus diis*). Then when a circle had been formed they began the discussions.
>
> Suddenly Lebuin appeared in the middle of the circle, clothed in his priestly garments, bearing a cross in his hands and a copy of the Gospels in the crook of his arm. Raising his voice, he cried: "Listen to me, listen. I am the messenger of Almighty God.[…]"

Lebuin's speech in the life of the saint is, of course, the work of the hagiographer, a typical *ex post* prophecy. The missionary was to have threatened the Saxons that if they refused to be baptized they would experience misfortune at the hands of Charles the Great, a fate that indeed befell them soon after. Irrespective of what Lebuin really said, his words provoked an angry reaction of the gathered people. First, "astonished at his words and at his unusual appearance, a hush fell upon the assembly." Yet, when they realized what the missionary's message was:

> […] they could no longer hold their tongue and cried out in a loud voice: "This is the wandering charlatan who goes about the country preaching wild, fantastic nonsense. Catch him and stone him to death." In spite of the efforts of the wiser among them to prevent it, the mob ran to the fence close by, wrenched stakes from it, pared and sharpened them and threw them, trying to transfix him. But suddenly he was no longer there (*accurrerunt ad vicinam saepem, raptos sudes acuerunt, ut more suo lapiderent eum cum sudibus. Reversi giraverunt eum, et ille inter eos stans subito non comparuit*).
>
> Then, all of them, both those who had been put to confusion and those who had tried to control them, condemned their action as unjust, and one of them in particular, a speaker named Buto, climbed on to the trunk of a tree and addressed them as follows: "All you who have any sense of justice, listen to what I have to say. When the Normans, Slavs, and Frisians or any other people send messengers to us we receive them peacefully and listen with courtesy to what they have to say. But now, when a messenger of God comes to us, look at the insults we pour upon him! […] he spoke the truth and […] the threats he uttered will not be long in happening." Moved by regret at what they had done, they decided that the messenger of God should go unharmed if he appeared again and that he should be allowed to travel wheresoever he pleased. Then, after this decision had been reached, they continued with the business they had in hand.[485]

485 VLA, chapter 6, p. 793f.

The details in this account allow us to recreate the topography of the assembly site. The participants of the meeting stood, as they did in the reference made by Cosmas, in a big circle. Inside the circle was empty space and in its very midst was a place for the speaker. It was there that Lebuin "clothed in his priestly garments" appeared and from there that Buto, standing on the tree stump (*conscedens truncum arboris*), also spoke. That stump seems to be the equivalent of the assembly step at the Szczecin square where St. Otto and later the pagan priest spoke to the crowd.

Scandalized by Lebuin's speech and standing in a circle, the participants of the Saxon assembly ran to a nearby fence (*ad vicinam saepem*) in order to pull out the stakes and then ran back to the middle of the square, surrounding Lebuin (*reversi giraverunt eum*). What this description seems to suggest is that in the course of the meeting, when they stood in the circle facing the middle of the square, the participants had some sort of palisade behind them. This assembly place thus looked similar to the grove of Prove and, just as it was there, this palisade was not of defensive nature. It was no more difficult for the agitated Saxons to pull out the stakes than it was for Bishop Gerold and his companions to take down the fence around the tribal sanctuary of the Wagri. In both cases, the palisade surrounding the assembly place marked the space protected by special peace. Helmold writes explicitly about this, while Buto emphasizes that the aggression of the crowd was directed against the envoy in an unacceptable way. It seems, however, that also in Marklo the assembly peace, which the quick-tempered participants of the assembly had almost desecrated with bloodshed, protected not only the envoy, but everyone who was on the fenced ground. For this reason, "the wiser among them," probably some of the elders, tried to stop the quick-tempered young men. Hence the embarrassment and common condemnation of the violent reaction a short while later, after emotions had waned.

Life of St. Lebuin does not directly mention the existence of any sacred object similar to Prove's oak trees at Marklo or of any sacred figure, such as that of Thor which, according to Adam of Bremen, stood on the Swedish assembly square. At the time of the prayers preceding the assembly proper, the Saxons gathered into a group (*in unum conglobati*) and only afterwards formed a big circle in order to debate (*deinde disposito grandi orbi concionari coeperunt*). This would suggest that there was some special, carefully chosen, cult place where at the beginning everyone gathered for the purpose of ritual. It does not seem that such a place could have been without some object expressing its *sacrum*.

The information from *Life of St. Lebuin* regarding the connection between cult and the decisions made at the assembly is what is most significant and most clearly formulated. The pleas that the gathered Saxons made in accordance with the prevailing custom to the gods concerned the subject of the assembly debates.

The gods were to inspire the members of the assembly so that they could make political and judicial decisions that would bring benefit to the people and at the same time – which amounted to the same thing – would be pleasing to all the gods without exception (*et quae forent placita omnibus diis*). The gods also had to be unanimous. The people's unanimity was a reflection of the unanimity among the gods who suggested to the participants of the assembly what decisions should be made. In uncertain matters, they had to turn to gods to ask for suggestions, that is, consult the oracles for advice. There is no doubt that oracles constituted a link between pagan cult practices and the mechanism of decision making at the assembly.

Tacitus emphasized that the Germanic peoples observed the suggestions of the oracle to the utmost (*auspicia sortesque ut qui maxime observant*).

> Their practice with lots is straightforward. Cutting a branch from a fruit tree, they chop it into slips and, after marking these out with certain signs, cast them completely at random over a white cloth. Then a civic priest, if the consultation is official, or the head of the family, if private, prays to the gods and, gazing up at the heavens, draws three separate slips: these he interprets by the previously inscribed mark. If the lots are opposed, consultation on that matter is over for that day; but if they allow, the confirmation of the auspices is still required. That is something familiar here as well, examining the calls and flights of birds. Peculiar to that people, in contrast, is to try as well the portents and omens of horses: maintained at public expense in the groves and woods, they are white and untouched by any earthly task; when yoked to the sacred chariot, the priest and the king or leading man of the state escort them and note their neighs and snorts. To no other auspices is greater faith granted, not only among the common folk, but among the nobles and priests, for they see themselves as mere servants of the gods, but the horses as their intimates (*se enim ministros deorum, illos conscios putant*).[486]

Tacitus was a Roman pagan, an heir to the Greek tradition and, if I may put it this way, a good Indo-European. In his eyes the oracle was not a secular game like rolling dice, but a way of communicating with the gods. He instantly understood that in the Germanic divination the horse was just a "confidant" of those who really spoke their mind, only a mediator in the process of communication between the people and their gods. Perhaps he also understood that the diversity of the oracle was a sign of the polytheism of the Germanic peoples. At any rate, he noticed that a favorable outcome of the lot drawing had to be confirmed by another kind of divination. Only the agreement of two different oracles (and not a repetition of the same divination) opened the door to auspicious action.

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486 Tacitus, *Germania*, chapter 10, pp. 29–31.

Rudolf of Fulda included Chapter 10 of *Germania*, which speaks of these oracles, in *Translatio sancti Alexandri*. Adam of Bremen knew the content of this chapter via Rudolf, yet there are no traces of any direct or indirect knowledge of Tacitus on the part of Thietmar. This is important, because the portrayal of the Lutici oracles painted with detail in his *Chronicle* generally resembles the ancient practices of the Germanic peoples that Tacitus describes. The similarity of content is not accompanied by a similarity of form. Neither Thietmar's terminology nor his phraseology demonstrates any literary affinity with Tacitus. The details of the ritual also differ, at times significantly. Thietmar gives some very precise details on this subject, details we would look for in works by any other author in vain. They come from eyewitnesses, probably from Henry II's envoys who were preparing an alliance of the emperor with the Lutici and were, as a result, present in Riedegost at the oracle ritual and assembly proceedings.

After a vivid description of the Temple of Svarozic in Riedegost, Thietmar states:

> To carefully protect this shrine, the inhabitants have instituted special priests. When they convene there to offer sacrifices to the idols or assuage their anger, these priests sit while everyone else stands. Murmuring together in secret, they tremble and dig in the earth so that, after casting lots, they may acquire certainty in regard to any questionable matters (*terram cum tremore infodiunt, quo srtibus emissis rerum certitudinem dubiarum perquirant*). When this is finished, they cover the lots with green grass and, after placing two spears crosswise on the ground, humbly lead over them a horse which they believe to be the largest of all and venerate as sacred. That which the casting of lots had already revealed to them, should also be foretold by this almost divine beast (*et premissis sortibus, quibus id exploravere prius, per hunc quasi divinum denuo auguriantur*). If the same omen appears in both cases, it is carried out in fact. Otherwise, the unhappy folk immediately reject it.[487]

Thietmar's description of the procedure of drawing lots differs from Tacitus's, and the manner of horse divination described differs remarkably. The Lutici could not, like the ancient Germanic peoples, harness the animal to a sacred chariot because the outcome of pulling the chariot over two spears driven crosswise into earth would be obvious. The divination horse from Riedegost was a saddle horse just as the horses from Szczecin, Arkona, or from the Daugava River region that played the same role. What seems more important than the differences between Thietmar's Slavic divinations and Tacitus's Germanic oracles is the structural similarity that links them: both in Tacitus and in Thietmar, the unanimous result of the lots and horse divination was required.

487 Thietmar, VI, 24, pp. 347–349.

This was obviously a sacred requirement, and the details provided by Thietmar help us decipher a sense to it that the chronicler himself probably did not understand. He noted that, digging up the earth to uncover the wooden lots hidden there, the Lutici priests alternately trembled or murmured some mysterious words. Commenting on this, Leszek Słupecki notes that the "alternate murmuring of sacred texts finds interesting parallels in the manner of reciting epic and shamanic texts in northern Europe." He also rightly observes that the fear that the priests manifested through trembling and visible to bystanders was meant to indicate the "access to chthonic powers essential to the ritual" made possible by the opening of the earth in that particular place. The lots were not governed by chance, and they themselves did not have the power to reveal the future. The lots were a sign given to the people by the chthonic god, the terrible ruler of the underworld and the underwater world.[488]

Who gave signs through the agency of the horse? This is a legitimate question, despite Thietmar's opinion that the Lutici ascribed divinity to the horse itself. This mistake was, or so it seems, also made by Herbord. According to him, St. Otto supposedly ordered the inhabitants of Szczecin to remove from amongst themselves "that living deity of their divinations (*illud vivum numen sortium vestrarum*, that is, the divination horse) because it is unbecoming for Christians to practice divination or magic." But for the purposes of a divination that was meant to decide about whether or not to embark on a plundering expedition, the priest led the saddled horse by the bridle. If the horse, led three times back and forth through nine spears spread on the ground, did not jostle any of them, it was considered to be a good omen. When seen in the context of Herbord's unambiguous statement that no one was worthy of riding that horse, the saddle put on the horse on the occasion of divination has a significance that the hagiographer failed to notice. Wolfger of Prüfening demonstrated more acumen in this respect. He stated that that horse, according to the inhabitants of Szczecin, belonged to the god Triglav, and this is why the saddle was, as befits a god, decorated with gold and silver (*Preterea et equum, qui dei Trigloi dicebatur, cives alere consueverunt. Nam et sella eius auro et argento, prout deum deceret, ornata* […] *ab ydolorum pontifice servabatur*).[489]

Saxo Grammaticus was even more explicit. His account about the pagan temples and rituals in Rügen is especially rich in detail. This is a reliable and competent source; the chronicler drew information on his subject directly from Archbishop

488 Słupecki, *Wyrocznie*, p. 144; Rosik makes a similar point in *Interpretacja chrześcijańska*, p. 119. It was probably Veles or one of his Polabian incarnations who spoke through the lots in Riedegost. See, Gieysztor, *Mitologia*, pp. 111–120.

489 Herbord, II, 32 and 33; VP, II, 1.

Absalon, who in 1168 participated in the conquest of Arkona and personally oversaw the destruction of the temple and the statue of Svetovid. By the statue there were, Saxo Grammaticus wrote, "a saddle and a bridle of the idol as well as various insignia of his divinity" (*frenum ac sella simulacri compluraque divinitatis insignia*), and among them a sword impressive in its size and ornaments.

> Apart from that, the deity had its own horse of white color. Pulling out any hair from its mane or tail was considered a godless deed […]. On this horse, as was commonly believed in Rügen, Svetovid – for this is how this idol was called – raged wars against the enemies of his divinity […].
>
> It was through this horse that they asked the oracle in the following way: if they wanted to start war against some country, the servants placed in front of the temple a triple obstacle made of spears driven with their spearheads crosswise into the earth, two in each row. Those obstacles were placed at equal distance one from another. When the expedition was to set off, the priest led the horse, strapped, out from the yard [of the temple] [dressed] with caparison (*cum loramentis*), so that it went through the spears. If the horse stepped over each spear first with its right and then with its left leg, it was read as auspicious divination for the war. If even once the horse lifted first its left leg, and then its right leg, the intention of invading another country was dropped. No sea expedition was undertaken, either, unless three consecutive signs of auspiciousness based on the horse's passage [through the spears] were asserted.
>
> When they began various [other] undertakings, they considered the divination offered by the animal's first passage. If it was auspicious, they set off gladly. If it was not auspicious, they turned back home. They also knew the drawing of lots. Namely, they cast three pieces of wood which was white on one side and black on the other and defined luck with white, and bad luck with black.[490]

We can see thus that neither the chronicler nor his perceptive informant confused the animal with deity. They understood that reverence for the horse was only a derivative of the reverence for the divine rider. In the description of the oracle, Saxo depicted only what was visible – the horse, the caparison, the priest, and the spears driven crosswise into the ground. He does not mention the invisible rider, perhaps, because he tried to reduce the beliefs of the pagan Slavs to objects and called Svetovid himself an idol (*simulacrum*), that is, a sculpture, a wooden figure that during horse divination stood motionless on a pedestal dug into the ground in the sanctuary. Yet, his dramatic personal experiences may have at times induced the Christian clergyman to understand the religious emotions of the pagans, and so he crossed his t's and dotted his i's. The following is what happened to the German Cistercian Theoderich in 1191 who participated in the

490 Saxo Grammaticus, XIV, 39–3, 9 and 10, pp. 465–467.

Christianization of the Livonians and later (between 1211 and 1219) was bishop of the Aesti. His story was written down by Henry of Livonia in his *Livonian Chronicle*. The chronicle tells us:

> The Livonians from Turaida intended to immolate friar Theoderich to their gods because his crops were abundant while their grains decayed on the fields as a result of rains and floods. The people were thus gathered (*colligitur populus*) in order to learn, through the oracle, god's will concerning the intended sacrifice. They lay down the spear; the horse is walking and at god's disposition it first puts down [that] leg that spells life (*ponitur lancea, calcat equus, pedem vite deputatum nutu Dei preponit*). The brother prays with his mouth and blesses with his hand. The priest of the oracle decides that it is the god of the Christians who sat on the horse's back and leads the horse's leg in such a way that it puts it down first. It is thus necessary to wipe the horse's back so that the god falls down (*Ariolus deum christianorum equi dorso insidere et pedem equi ad preponendum movere asserit, et ob hoc equi dorsum tergendum, quo deus elabatur*). When it was done and the horse, like before, first put down the leg of life [again], the Brother Theoderich was allowed to stay alive.[491]

The similarity of the oracle ritual among the Finno-Ugrian Livonians and the Slavic Rugani is striking, but this does not at all mean that Henry of Livonia borrowed the information on this subject from Saxo Grammaticus. After all, the chronicler of the Livonian mission did not find in the books the most important scene of wiping the horse's back to throw off the undesirable deity (i.e., Jesus Christ). He heard about it from Theoderich himself. No wonder, then, that the Cistercian missionary remembered for good the pagan priest's words that undid his already attained salvation and made his life or death again dependent on the tread of the horse's hoof. It would be hard to find more reliable evidence. In the understanding of the pagan priest from Turaida and his fellow tribesmen, the god of the Christians mounting the oracle horse usurped the place that belonged to the pagan god of the Livonians. It was not the horse that revealed the future with its hoof, but the invisible divine rider who directed the horse's steps: Svetovid in Arkona, Triglav in Szczecin, and Svarozic in Riedegost.

We can now return to Thietmar. Svarog-Svarozic was a solar deity, so he was situated on the opposite side of the Slavic pantheon in relation to the chthonic Veles. Elevated to the role of the main protective god of the Redarier and the entire Lutici federation, Svarozic was inevitably also bestowed with the military attributes of tribal leadership, including a saddle-horse on which he fought and foretold the outcome of the war.[492] But he was not the only omnipotent god. The

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491 HLiv, I, 10, p. 6.

492 I share the view of Gieysztor (*Mitologia*, p. 89f.), who in the Polabian and Pomeranian deities saw local incarnations, or to be more precise, local names of pan-Slavic

anticipation of a unanimous outcome of two oracle rituals – divination by drawing lots and divination by horse – meant a demand for agreement between the gods: the chthonic master of the lots dug out from the earth and the solar god Svarozic stepping over the spears on his saddle-horse. Discord between the gods boded ill for the intentions of the people and dictated resignation – sadly, because what was usually at stake was an expedition for loot. The joining of divine forces was a guarantee of success and simultaneously an inspiration for unanimity at the assembly. The similar evidence of Tacitus and Thietmar indicates that both among the Germanic and the Slavic peoples the agreement of the gods revealed through the oracles was a condition of agreement among the people at the assembly. Was the oracle thus a part of the assembly?

Direct information from the sources on this subject is meager and not entirely clear. The clearest hint is given by the above-cited passage from the *Livonian Chronicle of Henry*. The description of the divination begins there with the words *colligitur populus*, words that were usually used to describe the summoning of the people to the assembly. This time, the people gathered in order to examine, by means of the oracle, whether the gods desired the immolation of the missionary. Thietmar gives a similar piece of information. According to him, the Lutici, when going to war, first saluted the Riedegost sanctuary (*hanc ad bellum properantes salutant*), which is not strange at all. After all, the sacred battle flags (*vexilla eorum*) with images of the gods were kept there under the guardianship of the priests, so each expedition commenced and ended there. Thus, returning victoriously from war (*prospere redeuntes*) they honored the sanctuary with "appropriate gifts," that is, part of the loot, and "Just as I have mentioned, they carefully inquire, by casting lots and consulting the horse, what the priests should offer to their gods."[493] The chronicler does not mention convening an assembly on this occasion, but this would be redundant: both before the departure and after the return, the entire army gathered in Riedegost in order to take, and then return, their sacred symbols that were indispensible in battle. It was also necessary to offer the gods their due amount of loot. When consulting the oracle, the priests were, as at an assembly, surrounded by standing armed people.

In *Life of Ansgar*, very clearly Rimbert depicts the relation between the oracle's instruction and the decision of the assembly. In 852, Ansgar began his second

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gods; one of them became a guardian of the tribal community, with time acquiring a new name and extensive attributes of leadership. What corroborates this hypothesis is, in particular, the transformation (represented by sources) of Svarozic into Radegast.

493 Thietmar, VI, 25, p. 349.

mission in Sweden with a meeting with King Olaf and asked him to consent to Christianization in that country.

> "In former time," King Olaf said, "there have been clergy who have been driven out by a rising of the people and not by the command of the king. On this account I have not the power, nor do I dare, to approve the objects of your mission until I can consult our gods by the casting of lots and until I can enquire the will of the people in regard to this matter. Let your messenger attend with me the next assembly and I will speak to the people on your behalf (*Quapropter et ego hanc legationem vestram confirmare nec possum nec audeo, priusquam sortibus deos nostros consulam et populi quoque super hoc voluntatem interrogem. Sit missus tuus in placito mecum proximo, et ego pro te loquar populo*). And if they approve your desire and the gods consent, that which you have asked shall be successfully carried out, but if it should turn out otherwise, I will let you know." Such is their custom that the control of public business of every kind should rest with the unanimous will of the people rather than with the king's power. (*magis in populi unanimi viluntate quam in regis constet potestate*).

The realization of this announcement took place in two stages:

> Having first assembled his elders (*congregatis primo principibus suis*), the king began to discuss with them the mission on which our father [Ansgar] had come. They determined that enquiry should be made by the casting of lots (*sortibus quaerendum statuerunt*) in order to discover what was the will of the gods. They went out, therefore, to the plain, in accordance with their custom (*in campum*), and the lot decided that it was the will of God that the Christian religion should be established there […]. When the day for the assembly which was held in the town of Birka drew near, in accordance with their national custom the king caused a proclamation to be made to the people by the voice of a herald, in order that they might be informed concerning the object of their mission.

It at first caused confusion and cries of dissatisfaction, but "one of the older men amongst them" (*unus, qui erat senior natu*) managed to convince the crowd:

> When he had finished speaking all the people unanimously decided (*omnis multitudo populi unanimis effecta*) that the priests should remain with them, and that everything that pertained to the performance of the Christian mysteries should be done without let or hindrance.[494]

The oracle and the assembly did not share a unity of time and place in this case, but there was, if one may say so, a unity of the decision-making process. This process was divided into two phases, one closely linked with the other. Tacitus already wrote about them: "yet even those decisions that lie with the commons are considered in advance by the chiefs" (*ea quoque, quorum penes plebem arbitrium est, apud principes praetractentur*). Let us recall that in June 1124 the Pirissani also took the

494 Rimbert, chapters 26 and 27, p. 57f.

decision to allow St. Otto's mission in the same manner: first the *maiores*, that is the elders of the tribe, gathered in private, behind closed doors (*in conclavi*), and negotiated the decision, which they then presented for approval to the gathered people.

The Swedes proceeded in the same way. The matter of Ansgar's mission that was to be put before the assembly was first discussed and decided in a narrow circle of the king and the noblemen. They debated this issue – similarly to the Pirissani elders – in a closed room which they left only to draw lots as the custom required, that is, in the open (*exeuntes igitur more ipsorum in campum, miserunt sortes*). The assembly was held later and at a different place, but it was the decision that had already been made on the basis of the oracle that the assembly discussed and took. At any rate, when Olaf explained to Ansgar that he had to seek advice from the gods through oracle and ask the people at the assembly for their consent, we can understand that he considered both stages important for granting consent to the mission. In the eyes of the Swedish king, divination and the assembly, the voice of the gods and the voice of the people were inextricably connected.

There is nothing surprising here. The unanimous evidence of the sources indicates that the oracle was consulted on the questions of war and peace which lay within the purview of the assembly. It was also consulted on other political decisions. "Among the Rugiani," Helmold wrote, "the king is held in slight esteem in comparison with the *flamen*. For the latter divines the responses and ascertains the results of the lots. He depends on the command of the lots, but the king and the people depend on his command" (*Ille ad nutum sortium, porro rex et populus ad illius nutum pendent*).[495] These words have been cited repeatedly to prove the supposedly theocratic form of the tribal political systems of the northern Polabians, or to prove the unquestioned primacy of cult and the political hegemony of the Rugani. Apart from the alleged and obvious specificity, we are dealing here with a political rule. It was the assembly that was the place where the common decisions of the tribal king and the people were made. Helmold's words mean that the oracle significantly shaped the decisions of the assembly.

Apart from war expeditions, peace treaties, alliances, and relations with other peoples and their priests (including Christian missionaries), the most important decisions concerning particular persons also required the approval of the assembly. The sources quite often mention the elections of the kings, dukes, and chiefs. We obviously should not imagine those political acts in terms of democracy, yet neither should we ignore them. In particular, we should not treat the ritual of acclamation as an empty gesture that the assembly could do without. Let us recall in

495 Helmold, II, 8, p. 213.

this respect what the Venerable Bede wrote about the political system of the "old," that is, continental Saxons: "The Old Saxons have no king but only a number of *satrapae* who are set over the people and, when at any time war is about to break out, they cast lots impartially and all follow and obey the one on whom the lot falls" (*Non einim habent regem idem antiqui Saxones, sed satrapas plurimos suae genti praepositos, qui ingruente belli articulo mittunt aequaliter sortes, et quemcumque sors ostenderit, hunc tempore belli ducem omnes sequuntur, huic obtemperant*).[496]

The choice of the war chief on the basis of lots did not at all mean relying on chance and was not dictated by any concerns about the equality of chance. The comparative context does not allow us to doubt that what was at stake here was the oracle through which the gods suggested the leader endowed with fortune – a guarantee of victory. Bede does not mention here the assembly. He may not have known about it. He did not know much about relations in the lands of the "Old Saxons," and what he did know was what he had heard from others. He also did not explain who the people he described with the biblical term *satrapae* were. The much better informed editor of the oldest text about St. Lebuin borrowed from the Venerable Bede half a sentence containing the word *satrapae*, explaining at the same time that he meant the chiefs of local districts (*pagi*). Marklo on the Weser was the only place where all these local leaders met annually and could, on an equal footing, subject themselves to the divination by lots. "All, to the very last one, of the *satrapae*" arrived there, heading the representations of their local communities in order to hold the national assembly where they decided about matters of war and peace and settled particularly important disputes.[497]

Bede writes about the selection of the general leader through drawing lots, and Lebuin's first hagiographer writes about the general assembly. These two sources complement each other, although the implications related to the term *satrapae* need to be treated cautiously, as it is uncertain how Bede understood that word. The *Life of Lebuin* allows us settle this detail. But even without it, it would be clear that the oracle preceded and shaped the decisions of the assembly, although it could not replace it. The gods could indicate to the Saxons whom to choose as the leader, yet this was not equivalent to the act of choosing itself. It is hard to imagine Saxon warriors setting off to war with someone about whom they had only heard to have been chosen by the oracle, if they had not themselves proclaimed that man a chief at the assembly and had not shaken their spears themselves to show approval.

496 Bede, HEGA, V, 10, p. 458.
497 VLA, chapter 10, p. 793.

It was also the duty of the assembly to rule on judicial matters. The narrative sources do not mention appealing to the oracle in such cases. Yet we do have at our disposal some reliable evidence in the law of the Frisians. Title XIV of that law concerns manslaughter committed during a riot when "the killer cannot be found due to the large number of people present." The victim's relative, claiming the wergild, could accuse seven men from the crowd, and each of them had to clear his name with an oath sworn together with eleven oath helpers.

> Then they must be led to the church and lots must be laid on the altar, or if this can not be done near a church, on the relics of the saints. These lots must be as follows: two sticks of a broken twig, which are called *tenos*, one of which will be marked with the sign of the cross, while the other remains unmarked, and they are wrapped in pure wool and put on the altar or on the relics; and the priest if he is there, or, if there is no priest, an innocent boy, must take one of these lots from the altar; and meanwhile God is called upon, if he will give a sign to prove that these seven […] swore truthfully. If he takes the lot that is marked with the cross, the ones who swore are not guilty.

Otherwise, each of the accused had to prepare "his lot, that is, a *tenum*, from a twig, and draws on it his sign, which he and the ones around him can recognize." Next, all the lots were wrapped in wool and placed on the altar from where they were taken, one by one, by a priest or an innocent boy. "He whose lot happens to be the last, must pay the fine for the killing, while the ones whose lots were picked up before are absolved."[498]

This is a superficially Christianized form of the divination by lots described by Tacitus in chapter 10 of *Germania*. Here, and in *Germania*, sticks in the form of pieces of twigs taken from a tree (a fruit-bearing tree, Tacitus would add) and marked with cuts were used for this purpose. According to Tacitus, the lots were scattered on a white robe, while according to the law of the Frisians they were wrapped in white wool and placed on the altar. In Tacitus, the divination was performed by a pagan priest or the father of the family while praying to the gods and looking at the sky. In the Frisian law, it was performed by a Christian priest or an innocent boy who begged God for a sign of truth. We can clearly see that the Christian *sacrum* replaced the pagan one, while the old ritual remained largely unchanged. What is noteworthy here is the technical term used in the Frisian law to describe the divination stick: *tenus*. This is a Latinized form of the Old Germanic word *tainaz* (Gothic *tains*; Old Norse *teinn*; Anglo-Saxon *tăn*; Old High German *zein*). The presence of this word in the Latin written code of

498 LFris, XIV, 1, p. 56.

legal norms suggests strongly that it refers to an attribute of the pagan oracle that could not be translated into Latin.[499]

Title XIV of the Frisian law does not explicitly mention the assembly, but that was unnecessary. The matter was self-evident. The old pagan oracle – only moved to the church – was nevertheless used here to find the killer in the course of legal proceedings. In those times, there were no other courts in Frisia other than the assemblies. The norm that allowed a court verdict given by the assembly to be based the on the suggestions of the oracle was probably already a legal anachronism in the state of Charles the Great. We are all the more so allowed to see it as evidence of tribal pre-Christian practices.

The oracle was not consulted in all matters. Title XIV of the Frisian law suggests that the ritual of addressing the gods was used in particularly difficult situations, when other measures of legal practice had failed. The situation was similar in political matters. Ansgar's conversation with King Olaf I and the course of the subsequent conference of the king with the elders indicate that the gods were asked to help make decisions of the utmost importance, decisions involving considerable risk. When the matter at hand was simple, there was no need for divination. This does not change the general state of the matter; the gods were always present at the assembly as guarantors of the sacred peace and as a source of inspiration for the gathered people. They stood behind each decision of the assembly. The role that the priests and the oracles played at the assembly is telling evidence of the inseparable link between tribal politics and justice and with the pagan *sacrum*.

This link also included war. Let us recall Tacitus's perceptive remarks about the god who – as the Germanic peoples believed – accompanied the warriors going to war, and that the priests taking part in the expedition were allowed to use coercion by order of that god and not of the warrior leader. The warriors carried to battle "certain images and symbols" taken from their forest sanctuaries to acknowledge the presence of the deity with them (*effigiesque et signa quaedam detracta lucis in proelium ferunt*).[500]

What Thietmar tells us about the sacred battle banners of the Lutici corresponds to the observations of the Roman historian. The bishop of Merseburg mentions these flags three times. The first mention appears in the description of Henry II's campaign against Poland in 1005. The Lutici allies of the emperor "came, with images of their gods preceding them, on the day before we were to have arrived at the river Oder" (*deos suimet precedentes subsequuti*). This passage obviously means

499 Słupecki, *Wyrocznie*, pp. 109–111; Much, *Die Germania*, p. 131.

500 Tacitus, *Germania*, chapter 7, p. 26.

the banners carried at the head of the Lutici army. The second mention appears in the conclusion of the description of the Riedegost temple of Svarozic: "Their banners may never be removed from this place except in time of war and then only by warriors on foot" (*Vexilla quoque eorum, nisi ad expeditionis necessaria, et tunc per pedites, hinc nullatenus moventur*). Thietmar wrote the third mention nearly as it happened, for it concerns an incident between the allies that occurred in 1017, that is, a year before the chronicler's death. At the time of the siege of Lower-Silesia, Niemcza a certain antrustion of margrave Herman perforated the image of a goddess on a Lutici banner with a stone. The priests that accompanied the Lutici brought a complaint to Henry II and received 12 "talents" (pounds of silver?) as composition. However, when on their way back, a second image of the goddess drowned together with an elite troop of 50 warriors when they were crossing the Mulda river. "The rest returned under this evil omen and, at the instigation of wicked men, tried to remove themselves from the emperor's service. Yet, afterwards, a general assembly was held at which their leading men convinced them otherwise."[501]

Thietmar did not know Tacitus. He most probably did not even know Rudolf of Fulda's compilation, which had in any case omitted chapter 7 of *Germania* containing reference to the battle images from the sacred groves. There is not the slightest doubt that Thietmar's information about the Lutici "banners" came from eyewitnesses – imperial emissaries and the German participants of the war expeditions carried out with the Lutici. There are quite a few hard facts in these accounts that give the impression of direct, tangible contact with objects of idolatry. It turns out, for example, that the term *vexillum* (flag) was not quite precise. If a thrown stone could go through that flag, it must have been held by at least two staffs, rather than dangle from one. We also learn that priests – as in Tacitus – accompanied the Lutici army on its expedition and played a sufficiently significant role for the Christian emperor not to begrudge them a good round sum to appease their anger.

Tacitus wrote that the Germanic peoples take their battle emblems to war from sacred groves (*detracta lucis*), which meant that at times of peace they were kept in the sanctuaries. Also in this respect, the correspondence with Thietmar is complete. The Riedegost temple was, admittedly, a building, and the ancient Germanic peoples, as Tacitus emphasized, did not close their gods within four walls. But the groves from which the Germanic peoples took "certain images and symbols" to war were sanctuaries in the open air. At any rate, even Riedegost was located in such a grove: the fortified temple was surrounded on all sides by "a

501 Thietmar, VI, 22 and 23, p. 345 and VII, 64, pp. 559–561.

great forest which the inhabitants hold to be inviolable and holy" (*quam undique silva ab incolis intacta et venerabilis circumdat magna*).[502] The crucial military role of the tribal sanctuary, where under the guardianship of the priests the sacred battle signs indispensible to war expeditions (*ad expeditionis necessaria*) were kept – and from where any expedition must have departed and to where it always returned – was not a Lutici or Polabian peculiarity. The comparison with Tacitus allows us to assume that this was a common feature of the tribal political systems of the Germanic and Slavic peoples. According to Tacitus's suggestive expression, the god – guardian of the community – accompanied the warriors going to war.

According to Saxo Grammaticus, Svetovid not only waged war at night against the enemies of his divinity, but also had a group of three hundred riders in the worldly domain that took part in the expeditions of the Rugani and laid their entire loot in the temple. Other detachments gave only one-third of their loot to the temple treasury.[503] The analogy to the ducal antrustion (*trustis*) is a key to the correct reading of this information: Svetovid always fought at the forefront of his people, even when the only aim of the expedition was loot. And it was not only Svetovid. We learn from Thietmar's account that during the expedition in 1017, an elite troop of fifty warriors drowned in the waters of the Mulda river together with the image of the Lutici goddess. This was the goddess's adjutant troop. She most probably was the guardian of one of the Lutici tribes, although not of the Redarier, who fought under the command and sign of Svarozic. The pagan *sacrum* was inseparable from both war and peace.

Henryk Łowmiański, otherwise a great historian and an excellent scholar of the tribal Slavic lands and cultures, approached this matter with rationalistic scepticism. He treated the cult institutions of the Polabian Slavs, and even the protective deities themselves, in terms of social engineering – as instruments created by the elites of those tribes by which to govern the people. This would have been a peculiarity of the Lutici and Obotrites, an effect of the continual confrontation with pressure from the Christian powers. It is in this context that Łowmiański interpreted the sacred treasury of those tribes.[504]

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502 Thietmar, VI, 23, p. 345.

503 Saxo Grammaticus, XIV, 39, 7–9. The chronicler noted that the obligation to offer one-third of the loot to Svetovid was based on the conviction that it was under his divine command that all the loot was seized (*perinde atque eius praesidio obtentaque fuissent*).

504 Łowmiański, *Religia Słowian*.

The credibility of the information provided by Saxo Grammaticus, Herbord, or Thietmar about the customary offering of a given part of the loot to the pagan temples, the flow of gifts, and even the tributary services of the people is unquestionable. The detailed descriptions of the reserves of the temple treasuries raise no doubt. Information on this subject comes from Archbishop Absalom himself and Otto of Bamberg's companions, and thus, from people who led the destruction of the temples and the distribution of the riches collected there. Only this was not merely a Pomeranian, Rujani, Polabian, or even Slavic peculiarity. In 772, as was written in the official annals of the Frankish kingdom, Charles the Great for the first time set out to conquer Saxony and "seized the castle of Eresburg [in the land of the Angrivarii]; he reached as far as the [sanctuary of] Irminsula. He demolished that temple itself and took gold and silver which he found in there" (*ad Ermensul usque pervenit et ipsum fanum destruxit et aurum vel argentum, quod ibi repperit, abstulit*).[505]

Motifs of the Old Germanic cults were used, as is known, in the ideology of National Socialism. The outstanding expert on Old Norse literature, Klaus von See, devoted a demystifying book to the analysis of those abuses.[506] Yet the memory of the embarrassing adventures of the scholars of German antiquity with Hitlerism also gives rise to irrational, traumatic reactions. They are visible in research on the remote past, where heated ideological debates do not serve the research in any way. Klaus von See has also given in to this tendency to escape in the opposite direction. In an impassioned polemic with Otto Höfler and Walter Baetke, he questioned the sacred character of the peace of the assembly and the Old Norse formulaic *helga thing* delivered to open the assembly.

We could, in fact, skip this debate, especially given the fact that Jan de Vries's classic works in the field of religious studies emerge unscathed from these polemics. Klaus von See's argumentation concerning the meaning of the word *heilagr* merits, however, a reflection. His point is that this term was used to describe not only what was sacred (inviolable) in the realm of beliefs. *Heilagr* also referred to the protection of secular things, at times even very prosaic ones. Klaus von See's prime example was that of pigs grazing on a pasture to which the owner of the pigs was not entitled. They were considered *unhelgi*, deprived of legal protection, so one could take them or kill them with impunity. Klaus von See concluded on this basis that the terms *heilagr* and *helgi* had a different and much wider meaning that *heilig* ("holy") in contemporary German. It is difficult to disagree with

505 ARF, pp. 32/34.

506 Von See, *Barbar, Germane, Arier*.

this, but it is also impossible to agree with the ultimate conclusion that the word could supposedly have had two alternative meanings: one sacred and the other secular.[507] Klaus von See's semantic reflection allows us to draw an entirely different conclusion; that in the language of the old Germanic peoples there were no separate words to describe inviolability understood as sacred prohibition and inviolability understood in a totally secular way. The easiest way to explain this lack of separate words is through the lack of separate concepts. There was no place for the distinction between *sacrum* and *profanum* in the conceptual system of the barbarians – and this relates not only to the Germanic peoples.

The division between what is sacred and what is profane came only with Christianity or was imposed by it. In *Capitulatio de partibus Saxoniae* from 785, Charles the Great decided, simultaneously with the introduction of the death penalty for evading baptism or practicing crematory funeral rituals, that "no public meetings or court-sessions are to take place on Sundays, except perhaps in a case of great necessity or under the compulsion of war, but […] all are to resort to the church to hear the word of God and are to give themselves over to prayer and righteous works. On special feast-days also they are likewise to devote themselves to God and to congregating at church and are to forgo secular assemblies."[508] The demand to include Christ into the pantheon of worshipped gods was acceptable for the barbarians. The demand to renounce their own gods and practices was a shock to them, but at least they understood what the victors meant. The separation of the assembly from cult imposed by the victors would have seemed more absurd than terrifying to the Saxons. Separating what they considered inseparable was probably beyond their comprehension.

3. The King

The monarchic capstone of the tribal organization was not a common phenomenon among the Germanic and Slavic tribes. A good number of the tribes that Tacitus describes in *Germania* did not have kings. In the 8th century, the Saxons also made do without either a national king or kings of smaller tribes. As did the Lutici in the 11th and 12th centuries. It does not seem that this absence of kings in any way impaired either the tribes' ability to make political decisions or their

507 Von See, *Kontinuitätstheorie*, pp. 19–23, 26, 31, 35f.; see also Höfler, "'Sakraltheorie';" Baetke, "Der Begriff der Unheiligkeit." On the assembly formula of *thing-helga* and the concept of *heilagr*, see de Vries, *Altgermanische Religionsgeschichte*, vol. I, pp. 340–343.

508 CPS, chapter 18, p. 40.

military efficiency. It just so happens that these two tribal federations mounted exceptionally long-lasting and effective resistance to the Christian powers of the Europe of those times. Charles the Great needed 32 years to finally conquer the Saxons. The Lutici tribes, after they victoriously went against the Germans in 983–984, had for nearly two centuries successfully defended their independence, traditional order, and pagan cult. The king (duke) was therefore not an indispensible part of the tribal political order. Yet his was a part that played a particularly significant historical role. Royal leadership was a germ for the transformation of the political system which led to the replacement of the tribal community with the state. What aspects of the traditional functions of the tribal king could contribute to those transformations?

The tribe was a community that understood its unity in sacred terms. Any act against the community was treated as sacrilege. The cult practices linked with the assembly and war were based on the conviction that the gods participated in all activities of the tribal institutions. This conviction also applied to the institution of royal leadership. This is not simply about the divine genealogy of dynastic families. Otto Höfler and Jan de Vries soundly justified their thesis regarding the sacred character of the power of the Germanic kings. This thesis sparked an animated discussion, but its framework has survived criticism.[509]

Without questioning the sacred character of the tribal kingdom, Walter Schlesinger drew our attention to the military nature of this institution, well documented in the sources. Tacitus's mention that the Germanic peoples chose their kings according to nobility and their commanders according to bravery (*reges ex nobilitate, duces ex virtute sumunt*) also suggested to Schlesinger an idea about two opposing models: "sacred kingdom" and "military kingdom" (*Heerkönigtum*). Reinhard Wenskus also followed this trail. In his view, the social and political changes linked with late ancient migrations brought about a transformation of the archaic "sacred kingdom" into a dynamic "military kingdom" run by a commander. Although this was only a terminological proposition and an idea of a certain typology, this idea contained an original vision of the development of royal power among the Germanic peoples.[510]

The fragile source basis does not allow us to consider this vision as anything more than a hypothesis. I am not ready to support it, because I do not see any

509 Höfler, "Der Sakralcharakter;" de Vries, "Das Königtum;" likewise, Schlesinger, "Herrschaft und Gefolgschaft;" for criticism of these views, see Picard, *Germanisches Sakralkönigstum?*

510 Schlesinger, "Űber germanisches Heerkönigtum;" Wenskus, *Stammesbildung*, pp. 305–314 and 413–427.

crucial problems that would, on its basis, acquire any explanation otherwise inaccessible. "Sacred kingdom" and "military kingdom" are certainly useful conceptual constructions as they help us order the chaotic stock of information. Yet, we do not need to associate these terms with two separate entities. In my view, we can rather speak of a sacred aspect and a military aspect of the same institution. It is only the changing fortunes of history, or simply the circumstances in which the sources were written, that put to fore either the sacred or the military face of royal power. Rulers of various tribal warrior groups emerged in the field of vision of the late ancient sources. These groups, either through treaties or by force installed themselves within the empire and used the royal title as a tool for the integration of their people. We should not create a general rule out of this particular situation, a rule according to which the royal power within *barbaricum* would supposedly take shape and undergo transformation. If we are to search for those attributes of tribal leadership that made it easier for the Germanic and Slavic rulers to rebuild the traditional political system, then perhaps it is worthwhile to once again look at the laws of the barbarians. Perhaps they will allow us to reveal the image of the barbarian king as someone seen by his fellow tribesmen and women, and not by Roman politicians, leaders, or writers.[511]

In Polish historiography, popular literature, and textbooks, the habit of conceptually juxtaposing the term "king" with the term "duke" is deeply entrenched. This habit attributes meanings that the Latin words *rex* and *dux* acquired in the 10th century in regions under the influence of the German empire and makes them absolute in the Polish language. When we deal with Bolesław I the Brave's relations with Magdeburg and Rome, the problems of coronation come to the fore. When, however, we intend to examine the pagan roots of monarchic power and its image in the traditional cultures of barbarian Europe, the Latin titles from the times of Otto III and Pope Sylvester II will hamper our vision like blinders.

The German synonym of the term *dux* is *Herzog*. It comes from the venerable Old German word *herizogo* that derives from the expression *Heer ziehen*, that is, to lead the army, and it thus corresponds etymologically to the Slavic *vojvod* or *wojewoda*, and not duke. The Slavic duke, on the other hand, that is, *kněg*, *książe* or *knjaz*, the German *König*, the English *king*, the Old English *cyning*, the Old Norse *kuningr*, the Old German *kuninga-z*, and the Baltic *kunigas* are unquestionably cognates, only pronounced differently. They derive from the Indo-European stem

511 See, Modzelewski, "Wielki krewniak;" my remarks here overlap to a great extent with the theses of that article.

gen, *ken* (Germanic: *kun*, *kunja*, *kunjaz*), that is, "kinship" or "origin."[512] There is no reason for which the ethnic differences in the pronunciation of this word should lead us to conceptually juxtapose duke (*kneng*) with king (*König*, *kuning*).

In the Slavic languages, there was no other word for the ruler. According to the commonly accepted opinion, in the realm of the Germanic language the word *kuning* became widespread only in the early medieval period, although some peoples undoubtedly used it at the close of antiquity. Ammianus Marcellinus mentions that among the Burgundians the king was described with the word *hendinos*, and in accordance with an old custom the king is deposed if under his rule military luck runs out or if harvest fails (*apud hos generali nomine rex appelatur hendinos, et ritu veteri potestate remouetur, si sub eo fortuna titubauerit belli, uel segetum copiam negauerit terra*). *Hendinos* is most probably the term *kuninga-z*, distorted by the Roman historian, or, at any rate, a word deriving from the stem *gen*, *ken* or *kun*, *kunja*. As early as the 4th century, the Burgundians used the term to describe a ruler through whom they expected to obtain favor from the gods for their people.[513] The etymological link of this term with blood kinship is obvious, but I would not rush to conclude that it referred solely to dynastic charisma and to a royal family.

In the Germanic realm the word *thiudans* (Gothic *thiudans*; Old Norse *thiodann*; Old English *theoden*) was also used to refer to the king. The etymology of this word is clear; it derives from the word *thiuda* (a people in the ethnic sense, a tribe) with the addition of the individualizing and representational suffix *–n*. Wenskus saw this term as denoting a "sacred" king and argued that it was replaced with the "military" *kuning*. Yet this is only a speculation, an attempt to ascribe to two Old German words meanings created at the desks of historians.[514] The word *thiudans* as a Gothic equivalent of the Greek title *Basileus* appeared for the first time in Ulfilas, and was therefore written down at the same time when Ammianus Marcellinus noted that the Burgundians call their king *hendinos*. In England, the king was called *cuning*. In its reference to the events of 942, the *Anglo-Saxon Chronicle* referred to King Edmund I as *Engla theoden*,[515] while the Norse sources

512 Schlesinger, "Űber germanisches Heerkönigtum," p. 55f.; de Vries, "Das Königtum," pp. 291 ff.; Wenskus, *Stammesbildung*, pp. 320 and 326; Lapis, *Rex utilis*, p. 30.

513 Amm. Marc. XXVIII, 5, 14; de Vries, "Das Königtum," p. 301; Baetke, "Zur Frage des altnordisches Sakralkönigtum," p. 176f.; Wenskus, *Stammesbildung*, pp. 322 and 411; see also Green, *Language and History*, pp. 121–144.

514 Wenskus, *Stammesbildung*, pp. 322 and 411; see also Green, *Language and History*, pp. 121–144.

515 Earl-Plummer, p. 110 (manuscript A).

still used the word *thiodann* in the 12th and 13th centuries, although the word *konungr* was simultaneously in use.

It appears that both of these Germanic terms for "king" coexisted for centuries, and that they did not mean two separate notions but were synonymous. What is noteworthy is their different etymologies evoking different aspects of royal leadership. The term *thiudans* is particularly telling. What underlies this term is a conviction that the king was a personal keystone of the tribal community. What the etymologies of the words *thiudans* and *kuning* tell us about how the relation between the king and the people was understood can be enhanced with an analysis of the norms and categories of the traditional law. Although I have already discussed *leges barbarorum*, it is worthwhile to re-examine some of the norms from a different perspective, for we can deduce from some of the king's prerogatives and the manner in which they were represented how the bond between the king and his fellow tribesmen and women was perceived.

The laws of the Lombards, most of all, are a mine of information on this subject. Their state in Italy was constructed as a monarchy of the conquerors without the participation of the Roman elites. The preservation of the bond between the king and all Lombard warriors was a prerequisite for the survival of that state. Thus, the monarchy persistently adhered to the traditional tribal patterns of that bond, which came to be reflected both in ideological declarations and in the codifications of legal norms. This is the usual explanation for the special interest of the Lombard codifiers in the *mund* over women and the king's entitlements in this respect.

In chapter 204 of the edict, Rothari stipulated that no free woman living in his kingdom according to the Lombard laws could live independently, that is, *selbmundia*, but each had to remain under the authority of her male relatives or, at least, the king (*nisi semper sub potestatem virorum aut certe regis debeat permanere*). Likewise, she could neither give nor sell her property without consent from him under whose *mund* she lived.

The power (*potestas*) of the king over a woman who did not have any natural relatives or was freed from their guardianship is an authority of a special kind here. We should not confuse it with the king's public – in particular judicial – powers over the population of the free inhabitants of the kingdom. In this case, we are dealing with a *mund* that was previously held over a woman by her father, brother, paternal uncle, or cousin, and by her husband after marriage or by the late husband's heir when she was in widowhood. When they were no longer alive or when they proved morally incapable of holding the *mund*, it was the king who assumed the guardianship over her.

This was not an obligation to protect widows and orphans that was imposed on the Christian ruler. Such an obligation would have related to all free women,

whereas chapter 204 of the edict concerns only Lombard women. In any case, the *mund* was not a Christian institution. On the contrary, it derived from the traditional pagan culture which at times was at odds with the Christian norms concerning marriage and family. The rule that the king acts as a relative and holds guardianship over a Lombard woman in the absence of male relatives entitled to the *mund* over her derived from the same pre-Christian tradition. Ordered according to proximity, the chain of male relatives who could perform the role of the *mundoald* began with the father or brother, and in the case of a married woman, with the husband. Yet it always ended with the king.

The codifier stipulated explicitly that chapter 204 concerns only those free women who live by Lombard law. This is an exceptional stipulation in the edict; it was a personal law of an ethnic group and in principle did not deal with anybody else. The edict does not speak about Roman women because they were not subject to the *mund*. Apart from the Lombards and the Romans, there were also some Goths and immigrants from other Germanic peoples in Rothari's kingdom. Some of them preserved their distinct laws. In accordance with the legal tradition of those peoples, a woman should, as in the case of the Lombards, remain under the *mund* of her male relatives. The explicitly formulated reservation that chapter 204 concerns only women living by Lombard law obviously did not rule out the norms of the law of the Alemanni that concerned the *mund*, nor for instance, the Burgundian tradition of *wittimon*. All of this is not a reminder of the general principle of personal ethnic laws. It is about a very specific matter; the king of the Lombards could hold the *mund* only over the women from his tribe. What is at stake here, therefore, is a specific aspect of the tribal bond.

The king automatically inherited the *mund* over a Lombard woman if none of her male relatives entitled to her *mund* by virtue of close kinship was alive. The king could also acquire the *mund* for other reasons. Among the Lombards, a widow had the right to re-marry, yet she remained under the care of the heirs, her late husband's relatives. A candidate to her hand thus had to buy her *mund* from them. If those inheritors refused to accept the payment and consequently to hand over the *mund*, then in practice they made it impossible for the widow to get married. Chapter 182 of Rothari's edict treated this as an abuse of guardianship authority. As a result of such abuse – the edict stipulated – they lost their authority over the widow: "and the relatives of the first husband shall not have her *mundium* because they refused their consent: therefore her *mundium* shall return to her near relatives who first gave her to a husband. And if there are no legitimate relatives (*et si parentes non fuerint legitimi*), then her *mundium* shall belong to the king's court."

The role of the king is here analogous to the role of the relatives from the woman's paternal family who have the priority in taking the *mund* from unworthy

hands. Just as it was in the case of inheritance, the king appears here as the last link of the chain. The preceding links are ordered according to the levels of natural kinship.

It is worth noting that marrying a woman off and handing the *mund* to her husband was not equivalent to severing blood ties and to a complete renouncing of their honorary obligation to look after her. The men from the paternal family could defend, through an oath or a trial by duel, a woman accused of plotting against her husband (*nam si illa negaverit, liceat parentibus eam pureficare aut per sacramentum, aut per camphionem, id est per pugna*).[516] The question of her guilt or innocence was at the same time a matter of their common honor.

The paternal relatives also accepted under their guardianship a woman whose husband or late husband's relatives either committed a crime against her or inflicted insult on her. Yet then the king could act as a guardian of equal rank, or, to be more precise, an alternative guardian: "If anyone who possesses the *mundium* of a free girl or woman – with the exception of her father or brother – plots against the life of that girl or woman or tries to hand her over to a husband without her consent or voluntarily consents that someone do her violence, or if he plans one of these offenses and it is proved, he shall lose her *mundium* and the woman shall have the right to choose between two things. She may choose whether she wishes to return to her relatives or whether she wishes to commend herself – together with the property which legally belongs to her – to the king's court so that he may have her *mundium* in his control." A similar norm obtained if the *mundoald* – excluding the father or brother whose authority was not questioned under any circumstances – cast aspersions on his charge saying she was an adulteress or a female demon. The slanderer then lost his *mund*, and the slandered woman decided herself whether she returned under the guardianship of her relatives or under the king's *mund*.[517]

Chapter 186 sheds some further light on the role of the king: "If a man violently seizes a woman and takes her unwillingly to wife, he shall pay 900 solidi, half to the king and half to the woman's relatives. […] The woman then has the right to choose who shall have in power her *mundium*, together with all the property legally belonging to her. The woman she chooses as she wishes whether this shall be her father, if she has one, a brother, an uncle, or the king." The king is not only an alternative candidate to the *mundium* here, but a candidate equivalent to the natural relatives. He is also – on an equal footing with the father's family – a

516 LL, Ro, chapter 202, p. 58.
517 LL, Ro, chapters 195, 196 and 197, p. 56.

wronged party entitled to composition. The situation was similar in the case of the abduction of a woman. The culprit was "liable to pay 900 solidi, half to the king and half to the relatives of the girl, or to him to whom her *mundium* belongs. […] Moreover, the offender shall pay as composition to the betrothed man in whose disgrace or scorn he acted an amount equal to double the marriage portion set on the day the betrothal agreement was made."[518] The unfortunate fiancé is in the background, as it were. He has to content himself with double the value of the price agreed upon earlier. The exorbitant penalty of 900 solidi is due to those whose honor has really been sullied: to the male paternal relatives holding the *mund* over the woman and to the king.

What did the king gain? If a free Lombard woman was deliberately killed (chapter 201 of Rothari's edict), half of the huge penalty of 1200 solidi belonged "to the relatives or to him to whom her *mundium* belonged, and half to the king." For stopping and assaulting a free woman on the road, and thus for a crime against her honor, the culprit paid 900 solidi, "half to the king and half to […] him who is her legal guardian." If a husband kills "his innocent wife (*si maritus uxorem suam occiderit inmerentem, quod per legem non sit merita mori*), he must pay 1200 solidi as composition, half to the relatives […], and half to the king."[519]

We cannot explain the king's participation in these compositions in terms of a public fine for breaking the peace. The exorbitant amount of the fines indeed points to their sacred genealogy, but this does not explain the special position assumed by the Lombard king in the case of crimes against the honor of Lombard women. After all, he did not receive a single solid from the wergild of a free fellow tribesman. The king was not entitled to any of the 20 solidi paid by a culprit who stopped a free man on the road (Rothari, chapter 27). The king's participation in the compositions for crimes against the life and honor of Lombard women was not linked with his holding *mund* over them, either. These women had other *mundoalds*. Chapter 200 even speaks about a murder committed by a husband, that is, the legitimate *mundoald* of his victim. He paid the wife's wergild, that is, the 1200 solidi, half to the relatives and half to the king. The king's situation was here analogous to the situation of the paternal relatives of the murdered woman. They did not hold the *mund* over her, either. They had once given it up to the woman's murderer. Because of kinship, however, they retained their bond with the woman from their group. This is why she could, in certain circumstances, return to under their *mund*. And if she was unjustly killed by her husband, they

518 LL, Ro, chapter 191, p. 54.

519 LL, Ro, chapter 201, p. 58, chapter 26, p. 18 and chapter 200, p. 58.

were entitled to composition as an injured party on account of kinship. Yet on what grounds was the king entitled, in the same circumstances, to the same prerogative of honorary guardianship combined with the possibility of taking her *mund*?

Chapter 189 of Rothari's edict took into consideration two possible solutions of a conflict concerning voluntary sexual intercourse between an unmarried woman and a free man. If a compromise was reached and a marriage followed, the seducer paid, apart from the price for her *mund*, 20 solidi to her present guardians *pro culpa, id est anagrift*. In such a situation, the king did not intervene. Yet if the disgrace was not redeemed through marriage, the seducer had to pay 100 solidi to the men whose honor had been sullied: 50 solidi to the relatives and another 50 solidi to the king. For the girl, the customary law was much more ruthless in this respect: "her relatives have the right to take vengeance on her" (*potestatem habeant parentes in eam dare vindictam*). This meant that the relatives could, and even should, kill the woman who disgraced them. And if they did not fulfill that ruthless duty of honor (*et si parentes neglexerint aut noluerint in ipsa dare vindictam*), the king took over the initiative: "if the relatives neglect this or do not wish to take vengeance on her, then the king's gastald or schultheis shall take her to the king and he [i.e., the king] shall do with her as is pleasing to him." Most probably the king preferred to enslave the harlot and make use of her labor rather than kill her, but enslavement was seen in those times as a less severe alternative to death.

It needs to be emphasized that in this case the king did not hold the *mund* over the woman. All circumstances suggest, however, that he was considered, together with the *mundoald* and his relatives, to be an injured party in the seduction of the free unmarried Lombard woman. This is why half of the 100 solidi, which was evidently a fine paid by the seducer to the injured parties (who had the right to revenge), belonged to him. This is also why the king participated, in his own way, in the revenge taken on the loose woman. This retaliation was not the fulfillment of revenge between two families but an internal matter of one family: a bloody reckoning with a woman who had sullied the honor of her own kinship group. It can be said that this was strictly a familial issue. And yet it concerned the king to such a degree that he stepped in to punish the woman who had been spared by her blood relatives.

One might draw the conclusion here that in the traditional culture of which the norms of the Lombard laws were part, the king held superior guardianship authority over free women because all fellow tribesmen treated him as a sort of greater relative. Can we also suppose that other barbarian peoples understood the role of the king in a similar way?

The Salic law did not concern itself with the *mund*, yet it stipulated in title XLIV that upon a widow's remarriage, the candidate to her hand had to give a betrothal or "ring" payment (*reipus*) of 3 solidi and one denarius to one of the relatives. This payment was to be handed over at the assembly before a *thunginus* who on this occasion had to have a shield, and after three other cases had been brought to the same assembly (*in ipso mallo*). This would thus be a norm of a ritual character, which suggests an archaic genealogy of the ring payment. The *reipus* was due to one of the widow's relatives in order of proximity. When there were not any, it was due to one of the late husband's relatives but under the condition that he was not the one who had inherited the legacy. This meant that any son as the obvious inheritor was left out, and that the brother in the husband's family was first on the list of claimants to the payment. If the deceased left no sons, as a result of which the brother inherited the legacy, or had no brother, the *reipus* belonged to the collateral relatives: "[…] then he who is closest up to the sixth degree after those named above, who are named individually according to the degree of their kinship, if he does not come into the inheritance of the dead husband, shall receive the widow's betrothal fine. And if there is no one within the sixth degree, the betrothal fine or the proceeds of any suit that has arisen from it shall be collated by the fisc" (*Iam post sextum genuculum si non fuerint, in fisco reipus ipse vel causa, quae inde orta fuerit, colligatur*).

I have already examined this text in detail in chapter II of this book. I will only reiterate that the counting of the levels of kinship in this case began after the brother. Thus we are dealing here with a seven-level scale in which the closest relatives – the son, the brother and the father – constituted the first level. The reservation "if he does not come into the inheritance of the dead husband," repeated each time, indicates that the chain of the dead husband's relatives who could pretend to the ring payment corresponded to the chain of the potential inheritors.

The *Reipus*, or ring payment, was not, however, a constituent of the inheritance. It was probably a relic of guardianship entitlements based on kinship or affinity that were reflected in this specific control over a widow's remarriage. If there were no relatives or in-laws, the king took their place. In a sense he constituted an additional, eighth level of the chain of kinship defined in title XLIV with the term *parentilla.*

This term appears again in title LX of the Salic law: *De eum, qui se de parentilla tollere vult*. Also in this case, the legal act was performed at the assembly through activities of a ritual nature. A man who, standing before the *thunginus*, broke three alder tree sticks over his head and uttered a sacred formula about breaking off all ties with his family would from then on find himself in a situation as if he had no relatives. This did not mean a lack of belonging or rights. Such a man did

not become an exile. He remained a participant of the ethnic and legal community of the Franks that was headed by the king. What is more, the relation of that solitary individual to the king bore the signs of surrogate kinship. In case of his murder, no blood relative was obliged or entitled to revenge, and the king took up the role of the avenger. This is why the wergild – redemption from revenge – went to the royal fisc.

Unlike the penalty paid to the fisc if peace was broken by a murderer, arsonist, or thief, the wergild belonged to the relatives as did the right of revenge, and the *mund* and *reipus* discussed above. For the king to take over those prerogatives in case of necessity was, or so it seems, part of his traditional role in the tribal communities. When a person could not rely on relatives for natural reasons or as a result of the severing of blood ties, then the king became one's support: he was the great relative of all fellow tribesmen and women.

I have so far presented the idea of the "great relative" as an interpretation that combines the detailed norms of Rothari's edict and the Salic law into a logical whole and suggests a common explanation for both. In historiography, such interpretations have the status of hypotheses. It seems, however, that in this case we can go a step further because we have an early medieval source that explicitly defines the king's role in terms of kinship. This is not a text of a legal norm, but something more of an ideological declaration. It is the praise of King Edmund, written in verse, and included in manuscript A of the *Anglo-Saxon Chronicle* under the year 942. The king was described there with the solemn words: *"Engla theoden, maega mundbora."*[520]

Theoden is the Old Germanic *thiudans*, a royal title made from the word *thiuda* (a people in ethnic terms, that is, a tribe) with an addition of the individualizing suffix *–n*, as if the entire tribal community was embodied in one person. The expression *maega mundbora* develops, or more precisely, concretizes the conceptual content described with the term *theoden* as it points to a peculiar aspect of the tribal community and the king's function. The Old English word *maega* meant relatives or clan; *mundbora*, in turn, is a guardian, a defender, yet it refers primarily to the *mund* over women and minors. *Maega mundbora* then is, literally speaking, a "guardian of kin" or "guardian of relatives."

This was not referring to relations in the royal family, but was about the relation of the king to the entire community described as *Engla*. This was a general name of all the Anglo-Saxons. The chronicler chose the words in such a way so as to make the king of Wessex a keystone of this trans-tribal community. This was

520 Earl-Plummer, p. 110 (manuscript A).

a new phenomenon, the germ of a national bond which was, however, expressed and propagated in terms of traditional tribal culture. We thus gain an invaluable opportunity to look closely at those archaic categories.

The expression "guardian of kin" or "guardian of relatives" meant the king's relation to the entire population of fellow tribesmen and women. Let us note that the notion of kinship is expressed not only in the word *maega* but also in the word *mundbora*. Similarly to the Lombard *mundoald*, the latter referred to, after all, the relatives' guardianship. The linking of the two words – *maega mundbora* – expressed the idea of a kinship that bound the guardian king with those under his guardianship.

In the understanding of the traditional societies of European *barbaricum*, blood ties were the prototype for all social ties. The master's authority over a *laetus* was treated as paternal authority over a minor son. The master who freed a slave but retained patronage over him was from then on to live with the manumitted slave on such legal terms "as if [he lived] with a brother or another relative who was a free Lombard." The tribal tie was understood as blood kinship. The Lombards maintained the conviction that they were the adoptive offspring of Wotan long after Christianization. The patronymic names of the Slavic Lutici, Obotrites, Dadosezani, Vyatichi, Radimichs, and Krivichs seem to testify to their belief in descent from a common forefather. The conviction that their kings descended from Wotan[521] was sufficient for the Anglo-Saxons to believe in their own kinship with the Germanic god of warriors. Those tribes who had a king treated him as a keystone of their community (*thiudans*). Understanding the community in terms of mythical kinship, they thus considered the king "a great relative holding guardianship over all fellow tribesmen and women" (*maega mundbora*). Perhaps the common designation of royal authority in the languages of the Germanic, Slavic, and Baltic peoples – *kuninga-z*, *knęg* and *kunigas* – is linked with this understanding and not that of a dynastic charisma.

Walter Schlesinger and Reinhard Wenskus were not mistaken when they treated the tribal kingdom as a military institution. The tribe was indeed a community of warriors, although this aspect of tribal organization did not find an intelligible expression in the written laws of the legal tradition among all barbarian peoples. The information provided by the sources is surprisingly meager here. The military character of the bond between the king and the people surfaces primarily in the laws of the Lombards.

521 Bede, HEGA, I, 15, pp. 58–60.

We learn from the first sentence of Rothari's edict that it was announced "in the seventy-sixth year after the happy arrival of the Lombards in the land of Italy, led there by divine providence in the time of King Alboin." Further on, in the list of the rulers given to legitimize the law we read that: "Eleventh was Alboin, son of Audoin, who, as mentioned above, led the army into Italy" (*qui exercitum, ut supra, in italia adduxit*). The words "as mentioned above" (*ut supra*) refer to that part of the prologue which speaks of the Lombards' arrival in Italy. The interchangeable use of the ethnic term for the people (*Langobardi*) and the technical expression for the army (*exercitus*) was not accidental. The official prologue to the edict was an ideologically marked text in which words were chosen carefully. The fact that the people and the army were treated synonymously in this text was a kind of ideological and political demonstration of the foundations of the kingdom.

This solemn equivalence of the people and the army, moreover, corresponded in the specific norms of Rothari's codification and his continuators with the equivalence of the terms *liber homo – quis langobardus, excercitalis* and *arimannus*. Here these terms are not part of a solemn declaration, but refer to everyday practice or, at any rate, to the norms of the law that were in reality exacted by the courts and royal power. According to those norms, every free Lombard was a warrior and thus had to have arms and take part in expeditions.

Searching for clues of this equivalence, we can look again at chapters 371 and 373 of Rothari's edict. They dealt with the material responsibility for crimes committed by the king's slaves. In the law of the Lombards, the law generally required that the master pay the fines for his slave's misconduct. Chapter 371 introduced an exception to this rule in the obvious interest of the king regarding the penalties paid for serious crimes: "[…] where freemen and the slaves of other men [in this case their masters – K.M] are liable to pay 900 solidi […] a slave of the king […] shall be killed and the 900 solidi shall not be required from the king's court." This exception concerned only the gravest crimes. The royal treasury was responsible for all other crimes committed by the slaves of the king according to the common rules. In order to avoid misunderstanding, this was clarified in chapter 373: "If a king's slave […] commits any other minor crime, composition shall be paid just as in the case of the slaves of other warriors […]" (*Si servus regis* […] *culpa minorem fecerit, ita componat, sicut aliorum exercitalium, quae supra decreta sunt, conponuntur*).

This time we are not interested in the slaves, but in the terminology concerning their masters. It was first established that in certain circumstances the king's slaves would be treated differently from "the slaves of other men," and then it was confirmed that, apart from those exceptions, the king's slaves should be treated in

the same way as the slaves of "other warriors." There is no doubt that the expression "other people" in chapter 371 and "other warriors" in chapter 373 refer to the same category of people. And there is nothing surprising about it. The norm speaks about slave owners, that is, free people living by the law of the Lombards (the edict did not concern itself with the free Romans). Every free Lombard was, in the eyes of the codifier, a warrior. Therefore, the interchangeable use of the terms *liber homo* and *excercitalis* was part of the editorial routine. Luckily for us, one of those routine formulations sheds light on the position of the king within the conceptual system of the edict's editor.

What we have is the distinction of *servi regis* and *servi aliorum exercitalium*. Rothari's scribe used the terms rather thoughtlessly; he had in mind the slaves. He wanted to clearly formulate a legal norm concerning them and did not at all intend to speak about the character of the relations between the king and the entire group of free Lombard warriors. Yet the conceptual matrix "the king and [all] other warriors" is implicitly inscribed, completely unintentionally, within his words. It was obvious to the editor of the edict that the king is one of the warriors, a member of the military community of the tribe, and not merely its master.

Within this community, the king obviously held the highest position; he was the link uniting the whole. Liutprand's *Notitia de actoribus regis* (*Notice Concerning Royal Administrators*) incidentally reveals a piece of important information on this subject. In the fifth chapter of the edict, the ruler reiterates the prohibition on buying property belonging to the king's fortune from his administrators and also from the king's slaves or *aldii*. Liutprand relished in commenting on his own edicts, and so, this time the norm was accompanied by a moralizing comment. The king reproached the *arimanni*, who illegally bought royal property out of greed, for being ungrateful and for perjuring themselves. They were ungrateful, since after all, "we have given to the free *arimanni* what […] according to the old edict legally belonged to us and our courts" (*quia nos illum relaxavimus a livero eremmanos, quod nobis in curtes nostras secundum antiquo edicto legibus pertinebat*). "For if a man left only one daughter, she inherited only one-third of her father's property while two-thirds, if there were no close male relatives, went to the fisc. If a man had two or more daughters, they only received half of the father's legacy, while the other half belonged to the fisc. And now we have given up on all this […]. Let thus everyone be content with his property." Meanwhile, some people, as if they were not sufficiently content with this generosity, were viciously trying to get royal property. By the way, in chapters 1–4 of Liutprand's edict, where the daughters' inheritance entitlements were expanded, the testator was described as *quis Langobardus*. There is no doubt, therefore, that the "free warrior" (*liver eremmanus*) from the *Notice Concerning Royal Administrators* is identical to every free Lombard.

This *liver eremmanus*, when illegally buying the king's property, is, according to Liutprand, also guilty of the crime of perjury (*insuper et in periurii reatum nobis conparuit pertinere*), "for he swore to be faithful to us. And what kind of fidelity is this when he acts in collusion with the gastald or an administrator, or an *aldius* or a slave and seizes our property against our will?"[522]

Had it not been for the king's expressions of indignation, put in writing and added to the edict about the royal administrators, we would have known nothing about the oath of fidelity to the king that each free Lombard swore as a warrior. Liutprand did not introduce it; he only drew on it. The edicts of Liutprand's predecessors are also silent about it. Thus it was not a novelty decreed by Rothari or Grimoald. This has nothing to do with a norm of the written law, either, but with an ancient traditional ritual. What Liutprand's words suggest is that the oath was common; it included all free Lombards and therefore was not linked with supposed settlement on royal land or with forging a personal antrustian bond with the king (*gasindiate*). The oath sworn by all fellow tribesmen expressed the relation between the king and his people as a community of warriors. The king himself was, as was incidentally mentioned in Rothari's edict, one of the warriors, a member of that community and at the same time its keystone – a uniting institution.

Women and children did not, obviously, swear fidelity to the king. This was a warrior's oath that required reaching the age of majority, and it thus was a sort of initiation introducing young men into the military and political community of the tribe. It is worth citing Tacitus's words concerning such an initiation among the ancient Germanic peoples: "Yet it is not the custom for anyone to take up arms until the state has approved his worth. Then amidst the assembly, one of the leading men or his father or his kinsmen fit the young man with shield and *framea* [spear]: this is their toga, this the first honor of youth. Before this they seem part of the household, afterwards part of the citizen body" (*ante hoc domus pars videntur, mox rei publicae*).[523] Tacitus does not mention an oath. In his times, the royal form of authority existed only among some of the Germanic tribes. It seems, however, that the oath of loyalty sworn to the king by each free Lombard man when he reached the age of majority and became a warrior was likely to have been sworn in circumstances similar to those described by Tacitus. The Roman historian or his perceptive informant noted the momentous significance of the ritual initiation of the warrior; receiving arms, he became member of the tribal community (*pars rei*

522 LL, Li, Notitia, chapter 5, p. 230.

523 Tacitus, *Germania*, chapter 13, p. 33.

publicae). The sacred act of the loyalty oath sworn to the king would have had a similar significance. It introduced the youth into the community of Lombard warriors, a community constituted by each *arimannus's* relation with the great warrior: the king.

In all of medieval Europe, from the Carolingian monarchy to the monarchy of the Rurik dynasty, the rulers conferred stretches of no man's land on their favorites and the Church. The ruler's right to make such conferrals, or, to put it more broadly, to administer land that no one had previously cultivated is referred to by most scholars as "land regalia." This is a term from the desk of scholars, a name invented by researchers. I do not question its usefulness. Yet a name, even when carefully chosen, will not replace an explanation. The extent of land regalia is a moot matter and its genesis remains an open question.

No man's land could also be appropriated fully legally without any royal conferrals. This was done in the manner described in the Germanic sources with the term *bifang* or its Latin equivalents (*comprehensio*, *captura*). The Slavic synonym of that term was *zaimka* and referred to the same practice, well documented in Polish sources already at the turn of the twelfth and thirteenth centuries. I will reiterate that members of the community of neighbors had the right to *bifang*, and this right did not extend outside the community's territory. Everyone who had land on this territory, or had at least a home with a plot of ground, had the right – in proportion to the size of the property owned – to take land for clearing and cultivation and to use the forest, pasture, and water commons. No one else had the right to do so. The king's conferrals of no man's land which the recipient only then intended to bring into cultivation thus meant that the king gave the right of *bifang* to a person from outside the local community.

It is perhaps worth recalling how Abbot Liudger from Werden acquired, in the year 800, the right to take forest land for clearing on a territory where he did not have the right to *bifang*. Three brothers, Efurwin, Hildirad, and Irminwin, who had there "their own inherited estate and the right to forest commons" (*propriam hereditatem et dominationem in silva*) gave the abbot "the *bifang* that Liudger himself wished to have there, and Hildirad, on our [that is, all three brothers'] behalf took it and marked it" (*comprehensionem illam, quam ipse Liudgerus ibi desiderauit* […]. *Hildiradus in nostro nomine comprehendit simul et consignauit*).[524] This is how those who had the right to *bifang* could lend it to those who did not have it.

524 LUN, vol. I, no. 17, p. 10f.

Yet this could meet with objections from other neighbors. The norms of the Salic law already discussed in chapter 5 (title XLV and *extravagans XI-B*) stipulated that despite an invitation from one or more householders, an objection (*testatio*) from even one of the local people had binding power. The newcomer had to leave or was evicted by the count and lost his possessions. He also had to pay a fine of 30 solidi. The community of neighbors had exclusive right to the commons within its own territory. It was a closed and exclusive group that let a stranger in only under the condition of common unanimous consent.

Clovis I's codification respected this principle with only one telling exception. Title XIV, paragraph 4, prohibited the exercise of the traditional right of objection if the authorization to settle came not from any of the neighbors, but from the king himself: "If anyone contrary to the king's command presumes to halt (*testare*) or attack a man who is trying to move somewhere (*migrare*) and has a permit from the king's [to do so] and can show (*abundivit*) it [the king's permit] in public court, he [i.e., the neighbor who protests against the king's privilege] shall be liable to pay two hundred solidi."

The situation described here, in fact, corresponds to what we later find in documents as the ruler's conferral of no man's land. The Salic law, however, calls it a leave to settle and places the king in a situation analogous to that of neighbors who invite the stranger to their village. The coincidence of terminology with title XLV (*migrare*, *testare*) and the procedure of objection to the stranger confirms that this was how the role of the king was understood in this case. The ruler was represented here not as a bestower acting on the basis of a superior right to all land not appropriated by others, but as a neighbor having an unlimited right to *bifang* and lending this right to someone from outside the local community. Each of the neighbors could invite a stranger, but he had to reckon with a possible objection. The king, as can be seen, decided to not tolerate any objection.

The king himself was nowhere a stranger. The great relative of all tribesmen and women and brother in arms of all warriors was also the great neighbor, a member of every local community. As the first amongst warriors, he kept a fair amount of the war loot, including captured cattle and captives. This represented not only a source of livestock and slaves as commodities, but also a reservoir of slave labor and draught resource. The king's slaves cleared and cultivated virgin land transforming it into royal property. As the great neighbor of his fellow tribesmen, the king made use of the right of *bifang* to extend his estates everywhere, without any territorial restrictions. He could also lend that right to others, allowing his loyal collaborators and warriors to expand their property outside of their mother communities of neighbors. The intensification of this phenomenon on the threshhold of statehood must have aroused a sense of threat and resistance

in the local communities. There is no doubt that the traditional instrument of the neighbors' objection that barred a stranger's entry into the community was therefore used. Title XIV, paragraph 4, of the Salic law prohibited the use of this instrument against people introduced on the territory of the community by the king himself. The draconian fine – 200 solidi was a sum equal to the wergild of a free Frank – suggest that this was a recent restriction. It was imposed on the communities of neighbors in a charged atmosphere of conflict in order to break down the resistance that the extension of the ruler's prerogative encountered.

In my view, this is how land regalia came into being. With the deprivation of the neighbors of their traditional right to object to the king's introduction of foreign landholders onto the territory of the community, the king could lend *bifang* wherever he wished to whomever he wished. This paved the way for the conviction that the ruler had the right not only to take the land for himself, but also to give away land that did not belong to any other owner.

This is obviously a hypothesis. The meagerness of the source information does not allow us to claim anything with certainty in this respect. The concept of the king as the great neighbor of all fellow tribesmen should be legitimized within the historians' debate, since it allows us to explain the genesis of some of the prerogatives considered to be part of the land regalia without contradicting the source information. In this respect, this hypothesis is no less worthy than Henryk Łowmiański's or Karol Buczek's hypotheses. The former derived land regalia from the putative property entitlements of the tribal community. The latter was convinced of a very wide range of the king's superior rights to land.[525]

The category of land regalia has played a significant role in historiography, but it is difficult to resist the impression that it has also been used as a master key opening all doors. It has also created the illusion that it is enough to give a thing an appropriate name to make everything clear. Yet, the no man's land bestowals can be explained without assuming the king's superior land ownership. The hypothesis about the consolidation of the king's position within the communities of neighbors allows us, without resorting to the doctrine of superior land ownership, to also explain the genesis of the tribute paid to the king for pasturing pigs in oak and beech forests. We find it under the name of *narzaz / nařaz* in Poland, Bohemia, and Pomerania, but we also encounter it in Charles the Great's *Capitulare de villis*.[526] Such widespread occurrence allows us to assume that this service derived from a common pattern of the prerogatives of the barbarian king.

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525 Łowmiański, *Początki Polski*, vol. III, pp. 380 and 386f.; Buczek, "O tkz. Prawach książęcych" and "Uwagi o prawie chłopów," p. 98.

526 *Capitulare de villis*, chapter 36; Buczek, "O narzazie;" Modzelewski, *Chłopi*, pp. 84–86.

Not everything can be explained by the prerogatives of "the great neighbor" nor pigeonholed as land regalia. The monarch's right of escheat of legacies was a widespread phenomenon in barbarian Europe, and is also included in the category of land regalia. Yet it does not seem in any way linked to how land ownership was perceived. It was the degree of kinship that was the title giving one the right to inherit, and not the agrarian system. Among the Lombards, Bavarians, Saxons, and Franks, the right to legacy expired after the seventh degree of kinship. The king was the next one in line. He took over the legacy if there were no "closer relatives," that is, relatives entitled to inheritance, just as he took over the *mund* over a woman, or the *reipus* that belonged to the candidate to a widow's hand. The king's role of "the great relative" of all fellow tribesmen was the common denominator of all these undoubtedly analogous situations, and not the king's superior right to land or his participation in the communities of neighbors. If there was no relative up to the seventh degree of kinship, the rights went to him who was the last link of the chain of kinship in all families: the king.

The concept of the king as the first among warriors has not given rise to any significant polemics for it is close to the way of thinking about the medieval monarchy commonly accepted in historiography. The source foundation on which I have based my conclusions about how this role of the king was perceived by fellow tribesmen is, however, slim. One mention in Rothari's edict and one in Liutprand's. While we owe these mentions to coincidence, it is not surprising that they occur in the Lombard codifications. The archaic tradition that represented the king as head of the tribal community of warriors became a foundation of the state of the Lombards in Italy and survived in their culture much longer than in other successional monarchies. Yet this was a tradition shared by barbarian Europe. It is from this tribal archetype, rather than from the Roman models, that I would derive the important entitlements of the king of the Franks described with the Germanic term *heribann*. What lay behind this name was the commanding military power over all free tribesmen, including the right to call for a general levy. I do not see any reason to interpret this power in terms of the king's property rights to land, or to justify the obligation of obedience to commands and of participation in expeditions with the putative settlement on royal lands.

The tribal king was not a ruler in the later understanding of the term. He lacked the instruments of administrative coercion. It can be said that he led rather than reigned. Yet he was a keystone of the tribal community and thus had attributes adequate to the role of the great relative, great warrior, and great neighbor. They became a condition for the systemic changes which resulted in the leader of the community becoming its ruler.

Epilogue: The End of the World of the Barbarians

This book is not a course book, and so it does not have to cover everything. In attempting to reconstruct the social system of the Germanic and Slavic tribes, I have left aside a number of important questions. It was my conscious decision not to speak of matters about which I had nothing original to say. For this reason I did not take up the question of the creation of early medieval ethnic communities, so popular and hotly debated recently. In general, I share Walter Pohl's views in this matter, but this is not a reason to summarize them, or to recapitulate Reinhard Wenskus's magnificent work, or to discuss Herwig Wolfram's works.[527] The ethnogenetic processes can be captured mainly in Roman narratives about the Germanic migrations and conquests. I have looked at the states created by the conquerors on the territories of the empire from a different perspective; I have tried to extract out of the codes of the barbarian legal traditions the legacy of archaic culture, the deposits of the social norms brought from the realm of *barbaricum*. Doing this required looking at the Lombard saga of their people's origin, although it was not the process of ethnogenesis that was the object of my interest, but the relation of the mytho-historical tradition with their legal tradition.

Neither did I closely examine the antrustions (*trustis*). It was an important institution, but the strength of their units and their political significance in the archaic Germanic societies were grossly exaggerated. The antrustions had already fascinated Tacitus, who devoted to them a major part of chapter 13 and the entirety of chapter 14 of *Germania*. In the 19th and 20th centuries, and in the times of the Third Reich in particular, this fascination infected many scholars who in lofty words eulogized Germanic faithfulness, valor, and devotion to the Führer.[528] This is a charming topic within the history of historiography, yet in this book I have focused on something else. In tribal military forces, the small troops of youthful bodyguards that accompanied the governors performed a third-rate

527 Walter Pohl's diffuse work on this issue has recently been collected in Pohl, *Le origini etniche*; see Wenskus, *Stammesbildung*; Wolfram, *Die Goten* and *Das Reich and die Germanen*.

528 See Graus's incisive remarks, "Verfassungsgeschichte," p. 560f. and 570. From amongst the works written on the antrustion in the atmosphere of the 1930s, Höfler's study *Kultische Geheimbunde* has retained its critical value; see also Walter Schlesinger's excellent work, "Herrschaft und Gefolgschaft."

role. It was only on the threshold of statehood that the significance of the royal (ducal) antrustion grew. Even then, however, it did not become the major force of the army. This was not possible economically and logistically.[529] I am ready to attach the greatest significance to the role of the antrustion in setting the standard for the shaping of the personal relations which linked some warriors with the king or the mighty. It is also from the antrustion model that the Lombard *gasind* and the Frankish *vassal* (and his future European career) derive.

What is most conspicuously missing from this book is mythology. I have devoted much attention to pagan cult and its institutions, but I did not dare to deal with the gods of the Germanic, Slavic, and perhaps, even the Indo-European pantheon. I do not dismiss this research area. On the contrary, I am aware of its close connection to the social system of the European tribes. I am also aware, however, that this complex area of religious studies, calling no doubt for versatile competence, is beyond my grasp. Within Polish medieval studies, it is Aleksander Gieysztor who has written on the Germanic and Slavic pantheons. Jacek Banaszkiewicz also works within this field, as does a scholar of the younger generation, Leszek P. Słupecki. When necessary, I have drawn on their work, but I do not summarize it.

I think that despite the above shortcomings, the outline of the tribal social order I have given begins to take a definite shape. Perhaps I should give it a name. While it is true that labeling can lead to historiographic routine, it also plays a communicative role; it allows us to single out more clearly and distinguish more easily divergent visions of the past. We have been dealing with such keywords in research on the world of the barbarians for a long time. Classical German historiography defined its interpretation of the political system drawing on the notions of democracy and Germanic freedom. The "new school" of the 1930s and 1940s laughed at the liberal illusions of its predecessors and built its own vision centered on the notion of lordship (*Herrshaft*).

In this major dispute, the very question about the "democratic" or "authoritarian" nature of tribal organization seems to be posed in the wrong way. The categories of "democracy" and "lordship," as they were understood by nineteenth- and twentieth-century historians, were alien to the archaic cultures and did not fit the reality of the tribal system. The institutions of that system – from kinship group to a federation of tribes – functioned on collectivist principles. There was not room for democracy or for lordship, while the idea of freedom in those times differed significantly from our own and was linked inseparably to group affiliation. A person outside the community – a slave or an exile (a "wolf") – was not only deprived

529 See Łowmiański, *Początki Polski*, vol. IV, pp. 179–185.

of legal subjectivity, but simply did not belong to the world of living people. A slave's manumission was treated like birth, while making someone a slave was considered to be a less severe form of physical death.

What was also paramount to death was exile. In his Capitulary of 797, Charles the Great secured for himself an important prerogative in relation to malefactors who, "according to the law of the Saxons […] [should] be killed" (*malefactores, qui vitae periculum secundum ewa Saxonum incurrere debent*). If any of them escaped and looked for refuge at the court of the king of Franks, the ruler had two possibilities: either give him back to the Saxons, thus sending him off to die or, "with their consent, to remove the malefactor, with his wife and family and all his possessions, outside the native land and to settle him within his dominions or in a frontier-area, wherever he wishes, so that they may take him as dead" (*et habeant ipsum quasi mortuum*).[530] Exile forever removed the malefactor from the community of his tribe, of his neighbors, and of his kin. He was no longer among the living. It was tacitly assumed as obvious that there was no life outside community, because a man could only exist within a collective.

Exile belonged to the system of traditional punishments. The lack of administrative sanction seems particularly significant among the differences that divided the tribal organization from the state. Repression had a communal dimension, as did court judgements and the political decisions of the assembly. If I am to describe the entire system with a single expression, then barbarian collectivism seems the most appropriate.

Bringing up this concept for discussion, I should go back to the doubts I expressed at the very beginning concerning my use of the comparative method. I have put forward the assumption that it is possible to jointly compare sources that concern different peoples and which were written down at different times if we are dealing with similar anthropological situations in these sources. The considerable extension of source material was an effect of that decision. The end result depends on that extension in obvious ways. Many of the theses presented here could not be justified, or even sensibly formulated if they were based on sources related solely to the Franks, the Lombards, or the Alemanni. Some of the claims crucial to the whole would never have seen the light of day without a joint interpretation of the sources concerning the Germanic and Slavic worlds.

The pictures of the social systems of the Germanic and Slavic peoples thus obtained turned out to have much in common. Yet is this correspondence not a reproduction of an assumption already made, a result of the comparative method?

530 CS, chapter 10, p. 48f.

To what extent is the similarity of the image the result of a similar view of the barbarians held by the writers who belonged to the realm of Roman culture or were its medieval heirs?

It can, of course, be said that sources from different regions and written at different times cannot be interpreted collectively. This would be a decision as arbitrary as its opposite option and equally fateful, though in a different way. The postulate that the problematics of the social system should first be considered in relation to each people separately so that the results can afterwards be compared does not have even an ounce of realism. There would not be any results because they cannot be obtained on the basis of such restricted source material. There would thus be nothing to compare. Rejecting comparative interpretation leads to either the rejection of research on the social systems of barbarian tribes or to an interpretation of this issue with insufficient source material, that is, to arbitrary speculation.

The same can be said about the hypercritical judgments that discredit source material on the barbarians as being too contaminated by the stereotypes held by the Mediterranean civilization. Our sources are indeed marked by the viewpoint of classical culture, but we have no other place to look. Using them, we can always try, with more or less but always incomplete success, to rid ourselves of the influence of "Roman spectacles." We cannot be rid of them entirely. We can only throw them away together with the sources. In this case, however, we would have to give up on researching the social and political systems of the tribal communities and limit ourselves – as Walter Goffart has done – to studying the civilized narrators, as if the reality of the barbarian world they described had never existed.[531] Studying this world while simultaneously discrediting the sources which pertain to it is not possible unless we consider research a historiographical free-for-all cloaked in the pretences of professional rigor.

Deciding on a comparative analysis of sources that are linked by a common cultural matrix, I have shouldered the risk of uniformity. "There was no single old Germanic system" (*Die altgermanische Verfassung gab es nicht*) – Walter Pohl has recently stated. What he meant – as he was quick to clarify – was that in the Germanic world there were complex national multi-tribal structures (e.g., the expansive kingdom of Maroboduus) alongside independent one-tribe kingdoms, as well as more or less complex political communities that did without a royal authority. It is difficult not to agree with this. I also share Pohl's view that in comparison with the culture of the Roman empire, the peoples of *barbaricum* bear

531 Goffart, *The Narrators*.

signs typical of an archaic and not only Germanic order.[532] In this book I have attempted to reconstruct the foundations of the archaic order common to both the Germanic and Slavic peoples, but the homogeneity of the model of their tribal organization may raise sceptical reactions.

What can no doubt give rise to scepticism is the considerable degree of the cultural homogeneity of the sources. In their descriptions of the tribal peoples, Tacitus, Procopius of Caesarea, the Venerable Bede, Rimbert, Thietmar, Adam of Bremen, Helmold, and Saxo Grammaticus were all motivated by similar criteria of significance. They drew attention to the same phenomena – exotic, strange, or important from the point of view of the civilized people of their times. This does not necessarily undermine the credibility of the information we obtain from the sources, but it does affect the composition of the picture we get from them. This way of looking at something – let me repeat this again – is also a way of not seeing it. It is possible that our informers, attaching importance to the same aspects of the archaic order of things, omitted certain cultural and systemic specificities of the particular peoples. The comparative interpretation of such evidence can lead us to blur the diversity of the barbarian world. Control over the narrative sources by referring to the written codes of the legal tribal traditions allows us to decrease that risk, but it does not eliminate it completely.

This is an important though vague objection. Any attempts to draw specific conclusions from it resemble a walk along different paths which always lead to the same place: the relations between the barbarians and Rome or its heirs. There were important systemic differences between the states and the legal systems of the Lombards and the Visigoths. Historians who followed the trail of those differences, found a different order of relations between the Germanic ruling groups and Roman elites in Italy, on one hand, and in Spain, on the other.[533] This systemic diversity proved to have been the result of the diverse circumstances in which the two barbarian peoples entered the realm of Roman civilization. We are unable to capture any systemic differences between the Goths and the Lombards prior to their close encounters with the world of classical culture. The same can be said about the Burgundians, Franks, Alemanni, and Bavarians. The particular barbarian peoples at different times, under different circumstances, and in unequal ways came under the influence of Greco-Roman civilization. This was perhaps the most significant, or at least the most tangible, factor diversifying the

532 Pohl, *Die Germanen*, p. 65.

533 Diaz-Salinero, "El codigo," pp. 93–111; Delogu, "L'Editto," pp. 338f. and 242; Cingolani, *Le storie*, pp. 16–18.

face of Europe at that time. The differences that took shape then are visible even today. It is worthwhile to look at their origin.

Forty years ago, Walter Schlesinger suggested a new method for describing the variety of historical situations on the expansive territories of medieval Europe that came under the rule of Germanic leaders. The distinction of Roman Germania, Germanic Germania, and Slavic Germania was meant to intellectually bring order to chaos.[534]

I am not inclined to accept Schlesinger's proposal with all its implications. It is marked by an ethnocentrism that narrows the comparative horizon and fosters misunderstandings. From an ethnic point of view, the kingdoms of medieval Scandinavia belonged unquestionably to Germanic Germania, but in terms of their social and political system, they were more similar to Kievan Rus' or to Poland under the Piast dynasty than to Germany. More recent historiography has rightly drawn our attention to considerable similarities in the political system of Arpadian Hungary to those of Poland and Bohemia between the 11th and 12th centuries.[535] Taking all this into consideration, we should reject the ethnic criterion as useless in the typology of social structures. The value of Schlesinger's proposal lies somewhere else, however. It constitutes the first attempt to distinguish within medieval Europe areas which differed one from another in terms of the manner and extent of the barbarian peoples' adaptation to the Roman legacy.

Such an attempt requires courage. Historians fear simplifications, which are the prime cost of any typology. However, without a typology ordering the multitude of historical situations, we cannot understand the roots of European diversity. Walter Schlesinger did not steer clear of errors, but he paved the way for others. We should appreciate the pioneering courage of his idea. Schlesinger's typology remains a useful point of reference, and the first element of the triad – Roman Germania – seems acceptable. Despite the many differences there were among the kingdoms of the Goths, Burgundians, Franks, and Lombards, we can find a common denominator in their social systems. It is sufficiently significant to recognize that we are dealing with a historical whole, distinct from the rest of Europe lying beyond the boundaries of Roman influence.

I am not talking about the putative takeover by the Germanic conquerors of the administrations and treasuries of late antiquity. Contrary to Goffart and Durliat's theory, I think the situation in the particular Romano-barbarian or successional

534 Schlesinger, "West und Ost."

535 Sücs, *Les trios Europes*; Krzemieńska, Třeštik, "Wirtschaftliche Grundlagen;" Buczek, "Głos w dyskusji;" Russocki, "Le lines carolingien;" Modzelewski, "Europa Romana."

monarchies developed differently in this respect. In the Lombard state, the administrative structures of Roman statehood collapsed completely, but even there the Roman organization of the great landed estates (*latifundium*) survived. The Lombards took them over as spoils, the Burgundians and Visigoths, as accommodations being part of *hospitaticum*. Clovis and his people, in turn, probably simply came into possession of the imperial estates in Gaul. At any rate, in the whole of Roman Germania, the barbarian kings and elders seized a substantial part of the late ancient *latifundia*. The organization of the huge estates constituted a veritable foundation of the Roman social and economic system. It had taken centuries to lay this foundation, while the barbarians arrived after the work had already been done. They built their new dominions on the old foundation of the Roman agrarian structure. This is where I am ready to see the common denominator of Roman Germania.

What also seems acceptable is Schlesinger's proposal to differentiate between Roman Germania and Germanic Germania. They were indeed two separate worlds. In the monarchy of the Franks, this difference divided the territory into its Gallo-Roman and Frankish parts. In lower Rhineland, where the Franks constituted the core of the village population, enlarging the estate of the abbey in Werden was hard going at the turn of the 8th and 9th centuries. The patient manoeuvres of Abbot Liudger, who, little by little, attempted to enlarge the abbey's holdings, allow us to identify the obstacles the expansion of *latifundia* encountered in the traditional Germanic society. The collectivist structures of kinship and neighborhood still protected the freedom and property of small Frankish landholders there. Local communities did not let anyone from outside their neighborhood on their territory and did not allow anyone else to use their commons.

And yet, already in the times of Clovis, the Frankish elite must have had to adapt itself to meet the demands of ruling Roman Gaul. The ruling group in the Frankish state thus became an heir to Rome; and, having come into possession of *latifundia* on the territories of Neustria, Burgundy, and Aquitaine, they tried to transplant the basic elements of this Roman legacy to the Austrasian backwoods of their own tribe as well. This came about neither easily nor overnight.

Nor was it so simple to bring the Roman model to the other peoples of tribal Germania: the Alemanni, Thuringians, Bavarians, Frisians, and Saxons. None of these peoples found themselves on the territory of late Empire in the role of conquerors. On the contrary, it was the Frankish heirs of Rome who came to them as conquerors and imposed not only religion but also the basic principles of a new social order on Germanic Germania. It was difficult to bend the traditional barbarian societies to that new order. Even in Saxony, where the Franks acted with extreme brutality, Charles the Great had to finally resort to local traditions

and institutions. Both in the Frankish Rhineland and Swabian Alemannia, the traditional prerogatives of the tribal king had to be accepted as the starting point of systemic transformation. The entitlements of the great neighbor, which the king enjoyed and which gave him the right to *bifang* in any community, could be extended according to the norm we find in title XIV of the Salic law. Thanks to this, the king could grant his favorites the right of *bifang* at any place he wished, which with time came to be recognized as the right to give away the no man's land located within the entire state territory. There is no need to explain how significantly this contributed to the removal of the barriers that resistance on the part of the neighborhood communities had placed on the path to the expansion of *latifundium*.

The image of the Merovingians or Carolingians imposing the Roman tax system on the Austrasian Franks, Alemans, or Thuringians can just as well be shelved alongside the fairy tales. Yet, the barbarian tribes had their own rudimentary fiscal system on which the state could draw and which it could develop appropriately. In this way, the authority of tradition legitimized public dues imposed by the monarch. In the traditional societies, such legitimization was of primary importance.

Expanding its prerogatives as the great neighbor, royal power assumed authority over the most attractive forest pastures in various countries of barbarian Europe, which allowed it to exact tribute for pig grazing in oak and beech forests. The existence of such a tribute in the state of the Franks is confirmed by Charles the Great's *Capitulare de villis*. Yet this was neither a Frankish nor a Germanic peculiarity. In Poland under the Piast dynasty, in the Bohemian state under the Přemyslid dynasty, and in Pomerania, there was an analogous tribute called *narzaz* / *nařaz*.

Title XXXVIII of the law of Burgundians suggests that the barbarian king very early became "guardian of guests," a guarantor of the domestic peace that protected travelers and transformed the traditional obligation of hospitality into a service rendered for the monarchy. This obligation entailed offering hospitality both to the king's officers and envoys en route and to the king and his court on their regular tours around the country. These services were described in the Germanic countries as *gistum*, as *gościtwa* in Slavic Pomerania, as *stan* in Poland under the Piast dynasty, and as *nocleh* in Bohemia under the Přemyslid dynasty. The Old Russian *polud'e*, which, similarly to the Old Norse *weizla*, played a crucial role in the oldest system of charges for the state, had similar origins.[536]

536 Brühl, *Fodrum*; Łowmiański, *Początki Polski*, vol. IV, p. 140f.; Gurewicz, *Norweżskoje obszczestwo*, p. 148 and *Swobodnoje kresti'janstwo*, p. 117f.

There is no doubt that first place amongst these burdens were dues deriving from political tribute. The origin of this burden is best captured by the name under which it appears in the Bohemian sources: *tributum pacis*, or peace tribute. This indeed was the price of peace paid by one tribe to another. For one of the sides it was a necessity brought by defeat at war or fear of invasion; for the other, it was the fruit of victory, a bonus for the warlike spirit, a material expression of political supremacy. The ruling body of the tribe made the decision about the payment of tribute, but carrying it out required the participation of all fellow tribesmen in paying a regular tribute.

According to Fredgard, in the times of Chlothar II and Dagobert I, the Saxons paid 500 cows per year to the Franks, but in 633 Dagobert relieved them of this burden. Pepin the Short forced them to pay the tribute again, and its amount was, according to the Annals of the kingdom of Franks, 300 horses per year.[537] This was a considerable amount. It was, of course, divided among all the Saxons, but the high prices of cows, oxen, or horses made it impossible to exact such service from individual payers. The cattle tribute was probably paid at the collective expense of each Saxon *pagus*, according to the number of free and half-free people who lived there. This is the manner – no doubt established by custom – by which each *pagus* had to provide, according to chapter 15 of the *Capitulary* of 785, endowments for the local church. The *pagenses* had to allocate 2 yardlands of land and servants in proportion to their number: one male and one female slave per each 120 householders. In this provision, the so-called "long" or "great" hundred was the basis for its measure.

The tribute was not always paid with cattle. In Rus' the furry pelts of small animals substituted for currency. The tribute there – simply called *dan'* (tribute) – was a set number of marten pelts per "smoke" (chimney) or per coulter. In the 11th and 12th centuries in the state of the Rurik dynasty, the *dan'* was the most important tribute paid regularly by the entire population for the prince. Its collection in the local districts (*pogosts*) was overseen by the prince's officials. Before the royal territorial administration was organized, which the legendary annalist tradition partially attributed to the regency of Olga,[538] political tributes could only have been collected as they were in the Saxony of the 8th century – through the collective effort of the territorial and neighborhood communities.

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537 Fredegar, IV, 74; ARF, p. 17; see Lintzel, "Die Tributzahlungen," pp. 74–86.

538 PLV, p. 43 (under year 947): *Ide Vol'ga Novugorodu i ustavi po M'stě povosty i dani* (…) *i po Luzě obroki i dani; i łovišča eja suť po vsej zemli, znamen'ja i města i povosty*.

Within the Merovingian and Carolingian domain, political tribute and the public tribute that derived from it can be found only in the east. It was collected from the Germanic tribal territories incorporated into the state of the Franks or subjected to its authority. That tribute was described with the Germanic names *steura* (literally, "tribute") or *osterstuofa*, and with the Latin names *tributum* and *census regius*. The last of these terms – royal rent – caught on among German historians and caused much conceptual confusion because it was an ambiguous term. The sources used the term *census regius* in reference to both the general levy and the rent for the use of royal land that peasant settlers living on the king's estates paid. Through unjustified generalization, the founders of the theory of the *Königsfreie* interpreted every mention of the royal rent and of public tributes described as *tributum*, *steura*, or *osterstuofa* as a hallmark (*Leitfossil*) of the putative colonies of military settlers on royal land.[539]

Michael Gockel subjected this interpretation to scathing critique. He demonstrated that *osterstuofa* was also paid by people who undeniably lived on their own allodial land, and not on the king's land. He also drew our attention to documents in which this tribute was explicitly described as a public due subject to immunity, just as were the mandatory participation in the general levy (*heribann*) and public court punishments for the violation of public peace (*fredus*).[540]

There are also quite a few documents that explicitly suggest the public and general character of tributary services rendered by the population partly for the ruler, partly for his officers, and partly for church institutions. In 817, Louis the Pious granted the St. Gallen abbey "a certain rent for the yardlands specified below, [namely] that part which by custom belonged to the *comites*, excluding that part which either as tribute, or rent or any other kind of payment, belongs to our court" (*quoddam censum de subter scriptis mansis, illud quod partibus comitum exire solebat, salva tamen functione, quae tam ex censum quam ex tributum vel alia qualibet re partibus palatii nostri exire debent*). After this, 47 yardlands were described, each with the name of its owner, the name of the village in which it lay, and the name of the *comes* who performed his duties there. This concerned seven *comites*: Frumold, Gunthard, Karamann, Hruadhar, Erchangar, Rychwin and Odalric, all of whom the king categorically forbade to collect any "rent or tribute" from the owners of the yardlands.[541]

539 Dannenbauer, *Grundlagen*, p. 319; Schlesinger, *Landesherrschaft*, p. 77; Bosl, *Franken*, p. 24f. and "Soziale Mobilität," p. 172f.

540 Gockel, *Karolingische Königshoffe*, pp. 96–100.

541 USG, vol. I, no. 226, p. 257.

Louis the Pious was in this case generous at others' expense, but thanks to his act we gain some invaluable information. It was not the land that was the object of the grant. The yardlands listed in the document evidently remained in the hands of their owners. Perhaps they deeded the title to the abbey, retaining the right to use the land, but this is only speculation. The royal document did not concern this issue at all. Louis gave the abbey only the public tribute, or, more precisely speaking, only that part of it usually due to the *comites*, while he kept for himself the part due to the royal court. Thus, we see that that it was not on the basis of living on royal lands that this tribute was collected. The owners of the 47 yardlands listed in the document were in one way or another likely linked to the St. Gallen abbey. Nothing suggests, however, that they were in any way linked to royal properties.

In 839, Louis the Pious granted the abbey of Reichenau "a certain part of rent, that is, tribute, that was paid to us annually in Alemannia, namely, in the *centena* called Eritgau and in the county of *comes* Conrad, as well as the tithe from that part of the county under the authority of *comes* Raban that lies within the territory of Alemannia. And also the tithe from the royal estate called Sarbach, and the ninth part of the tribute taken from district Breisgau for our use […]. We at the same time order that the tithes and ninths we grant to the above mentioned abbey be supplied to the abbey stewards in the first place before the amount of rents and tributes is allocated. Only afterwards can the parts for us or our *comites* be assigned (*quandam partem census seu tributi, quae nobis annuatim ex Alamannia persolvebatur, videlicet in centena Eritgaouua noncupatam et ex ministerio Chuonradi comitis, nec non et decimam de portione ministerii, quod Raban comes habet, quod pertingit finibus Alamannicis; seu et nonam de fisco cuius vocabulum est Sarbach; atque etiam et nonam partem tributi, quae ex Brisachgouue ad nostrum exigitur opus* […] *Sed et statuentes precipimus, ut none atque decimae, quae* […] *praedicto contulimus monasterio, primo, antequam summa censuum et tributorum dispertiatur, agentibus monasterii detur, et postmodum fiat divisio partium, que ad nostrum vel comitum nostrorum ius pertinere debent*).[542]

The tribute (*census vel tributus*) collected annually by the king of the Franks on the entire territory of Alemannia was not, obviously, a payment of rent-payers living on royal land but a general public due of the free population. The tributary origins of this public due seem unquestionable. The units of the territorial organization of the kingdom were the cells of the tributary system: the *centenae* and counties. The document also mentions the granting of one ninth from the

542 Wirt. UB, vol. I, no. 103, p. 117; on interpretation, see Schulze, *Grafschaftsverfassung*, p. 135f.

income of the royal estate at Sasbach, and soon thereafter there is a mention of the "the ninth part of the tribute" from the entire Breisgau district where the estate was located. Let us add that the "ninth" (*nona*) was not, despite appearances, one-ninth but one-tenth of the income. The term *nona* was used in a situation when the tithe had already been previously granted to another church institution. Therefore, out of ten equal parts of the income, the newly-endowed abbey was given the ninth part. The king and his noblemen had eight-tenths at their disposal. Someone else, perhaps the bishop, had received prior to 839 the tithe from the tribute collected from the population in the Breisgau district. What follows from this is that supplying the church institutions with the tithe share of the royal incomes from tribute payments was common practice on the Germanic territories of the Carolingian empire.

This model was used on the west Slavic territories that had been subjugated and incorporated into the Empire. In 889, King Arnulf confirmed to the bishopric of Würzburg the right to "the tithe from the tribute paid, according to custom, to the fisc by eastern Franks and Slavs, and which is called in their eastern Frank [that is, German] language *steura* or *osterstoufa*" (*decimam tributi, quae de partibus orientalium Franchorum vel de Sclavis ad fiscum dominicum annuatim persolvere solebant, quae secundum illorum linquam steora vel ostarstuopha vocatur*).[543]

When it comes to the mentioned Slavs, this was a political tribute paid to the German kingdom by the tribal organization rather than an economic due of tributary origins collected by the monarch's administration. Characteristically, in King Arnulf's document that tribute was treated as an equivalent to the east Frankish *steura*/*osterstoufa*.

Otto I therefore followed "the beaten path" of this practice when he endowed the church institutions established on Slavic territories with tithes from tributary incomes. In 965, he granted the St. Maurice abbey of Magdeburg the tenth part of the rent belonging to the emperor from "the peoples we have subjugated" (*a subditis nobis nationibus*), namely the Ukrani, Retschanen, Redarier, Tollenser, and Circipani."[544] It clearly follows from the words of the document and from what we know about the situation in the Polabian region that what is meant here is political tribute paid by these tribes to the German empire as a token of their recognition of its supremacy in the region. These tribes raised the means they promised to the emperor on their own. Otto I had no administrative executive here. The tribute from the tribes that would soon form the Lutici union was, thus,

543 Arnulfi Diplomata, year 889.

544 DO, vol. I, no. 295.

a very uncertain – and as it soon turned out – precarious source of income. The incomes from this source stopped definitively in 983 at the latest.

The situation developed differently in the southern Polabian region. In the 10th century, the German authority managed to destroy the foundations of the autonomous political and military organization of the Slavic tribes, create a chain of local burgwards, and bring the population under the administrative control of the monarchy.[545] The great uprising of 983–984 did not spread here. What did work out here, though, was the model of providing for the church institutions being established there by means of a tribute paid to the monarchy. In 971, Otto I granted the Meissen bishopric founded in December 968 "the tenth part of the tribute which in five provinces, that is, of the Daleminci, Nisane, Dadosesani, Milceni, and Lusitzi, constitutes part of our imperial entitlement, so that the *comes* of these territories, before he takes and allocates the part given him by us, pays the tithe from everything and in entirety to the mentioned church of God, that is, in honey, pelts, silver fee, slaves, clothes, pigs, and cereal […]."[546]

These incomes's tributary origins are clear, although this time it is not about the payment from each tribe to the benefit of empire. In the document from 971, the tribal names serve to define the territories on which the Meissen bishopric was entitled to *decima pars tributi*. The diversity of the goods suggests that a complex system of services was being shaped under that name. The imperial administration of the monarchy collected them, relying probably on the organization of the local burgwards. The "*comes* of those territories," that is, a margrave, oversaw the collection of those goods. He is the one who was obliged to give the tenth part of the collected tributes to the bishopric before he subtracts his own salary and gives the rest to the king. Thus a fiscal organization was created that, through the tributary exploitation of the free population, secured income for the ruler, his noblemen and the clergy.

This resembles the systems built in Poland by the Piast dynasty, in Hungary by the Arpad dynasty, and in Rus' by the Rurik dynasty. According to the bull of 1136, the archbishopric of Gniezno received from 16 castle districts that were located within the territory of the archbishopric, the tenth part of the natural products, and commodity money from the tributes paid by the people to the fisc and from the other incomes of the fisc. The notice about the attribution by Bolesław II the Bold to the Benedictines of Mogilno of the ninth (*nona*) from the duke's incomes suggests that in Mazovia, too, as well as in other dioceses of the

545 Schlesinger, "Zur Gerichtsverfassung;" see Fritze, *Frühzeit*, p. 142.
546 SUB, vol. I, no. 295.

Polish church province, the original provisions to the bishoprics included the tithe from the public tributes paid by the people.[547]

It is hard to say if the bishopric of Prague also received a similar income. Soběslav I's documents inform us that the Visegrád canons collected the tenth part of the peace tribute (*decimam marcam annui tributi*) from 16 ducal towns, while Soběslav extended this entitlement to another three town districts.[548]

In a decree issued by Coloman, king of Hungary, before 1104, there is a norm of nation-wide range: "From the tributes and fees, just as we decided to give the third part [of the income] to the ispáns [i.e., *comites*], so we also grant the tithe to the bishops" (*De tributis autem et vectigalibus, sicut comitibus tertiam partem dare decrevimus, ita decimam quoque episcopis censemus*).[549] What is noteworthy in this formulation is that both the remunerations of the royal high officials and bishops are treated in the same terms as part of the public tribute paid by the people.

The bishoprics were entitled to a tenth part of the income from public tributes in Rus' as well. The Novgorod prince Sviatoslav Olegovich stated in a statute of 1137 that he adhered to a principle established long ago by his predecessors (*A zde v Novegorode čto est desjatina ot danii, obretoch urjaženo preže mene byvšimi knjazi*). Prince Rostislav Mstislavič, founding the Smolensk bishopric in 1136, could claim credit for precedence because he acted as a bestower: "I thus bestow on the holy Mother of God and the bishop the tithe from all Smolensk tributes, from how many martens they in fact collect" (*desjatinu ot vsech danej smolenskich, čto sja v nich schodit istych kun*).[550] At that time, the amount of the tribute to be collected in each *pogost* was estimated, and the tithe to be paid to the bishop calculated. Their sum was more than 301 *grivna* in marten pelts. In reality, the bishopric received more, since in several *pogosts* the stewards had been unable to calculate the tributes in advance and, what is more, it was hard to predict the regular income, so it was only written: "as much as is collected (*čto sja snedet*), the bishop gets the tithe from it."

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547 KWp, vol. I, no. 7 and vol. IV, no. 3; see Abraham, "O powstaniu dziesięciny," p. 154f.; Modzelewski, *Organizacja gospodarcza*, second edition, pp. 76–85.

548 CDB, vol. I, no. 111.

549 DRH, Coloman, 25, p. 27; see Coloman, 78 and 79, p. 31 and Ladislaus, III, 13, p. 19f.

550 *Pamjatniki Russkogo Prava*, vol. II, p. 117f., year 1137 (Svjatoslav's statute) and pp. 39–42 (Rostislav's document). The date of the foundation of the Smolensk bishopric and the document of the foundation itself (year 1136) has been specified by Poppe, "Fundacja biskupstwa."

According to the *Vast Russkaya Pravda*, edited shortly before Rostislav's document, the compensation for an ox was 1 *grivna* of marten pelts. The tithe "from the Smolensk tributes" written down in the document of 1136 was thus worth approximately 300–400 oxen. This was a considerable income, many times higher than what the land given to the bishopric by Rostislav upon its foundation could yield. The bishop received from the prince merely two hamlets populated by peasants (Drosienskoje and Jasienskoje with the *izgois*), some land in Pogonoviči, meadows, two lakes, two estates marked out by the prince that were probably intended for cultivation, a group of freed people (*proščeniki*), an orchard with a gardener, and a fowler with his family.

The contrast between the modest grant of land and the generous provision of income from public tributes paid by the population seems typical of those times and of that part of Europe. The prince and the wealthy bestowed gifts on the church that did not exceed their means. They gave what they themselves had. In the 11th and 12th centuries, the material position of the ruling groups in Rus', Poland, Bohemia, and Hungary was based mainly on the tributary exploitation of the free people by the state. The bishoprics derived their income mainly from that source as well. The estates of the noblemen, and even of the ruler were not sufficient to provide the church organization which was being established with adequate maintenance by simply "granting it land with people."

What is noteworthy is the geographic scope of the information on granting the Church a share in the tributary incomes of the monarchy. This was common practice on the entire territory of *barbaricum* from the Rhine to the Dnieper River. Arnulf of Carinthia may have followed the solutions used in Alemannia as early as the times of Louis the Pious. On the territory of Germany, Otto I had a ready model that he could use when organizing the material foundations of the Church on the territories of the Polabian Slavs. That Bolesław I the Brave in Poland and Stephen I of Hungary may have used the imperial model seems possible, though less likely. The probability that Vladimir the Great and his successors used the Carolingian-Ottonian model (say, for example, following Poland) when granting the Orthodox Church the tithe from the tributes is, in my view, marginal. What undermines such interpretation is the Byzantine origin of the Russian Church. At any rate, the reasons why the practice of providing the Church with a share of the income from public tributes became widespread cannot be reduced to a wandering model. Irrespective of whether the rulers and bishops drew their inspiration from solutions already tested somewhere else or whether they came up with the idea themselves, it responded to the needs of the Church and the political and social conditions of the new states. This solution became widespread not because one imitated another, but because they had to meet similar challenges in similar situations.

We can speak here of a similarity of social systems. The traditional organization of tribal society limited the expansion of the *latifundia*. Although already in the times of Tacitus there were among the Germanic peoples estates so great that it was profitable to settle slaves on them as "tenant[s],"[551] they were – and would remain for a long time – a narrow margin of the agrarian structure. What prevented the expansion of manorialism were the collectivist structures of kinship, neighborhood, and jurisdiction. They effectively protected the masses of free fellow tribesmen from loss of freedom and property. On their estates, the tribe's elders could use mainly slave labor and the few declassed free people who found themselves outside their native kinship and neighborhood groups and thus had to settle on someone else's land. It is true that the kings, rulers, and chieftains received a lion's share of the war booty that included prisoners of war from other tribes, but the majority of these slaves were sold to foreign merchants. Anyway, using prisoners of war to settle on no man's land was only possible within the native territorial community. The road to supralocal estate complexes was blocked by the neighbor's right to oppose an intruder trying to make use of the commons and the land of the community. Only the king as the great neighbor had the right to *bifang* everywhere. Title XIV, paragraph 4, of the Salic law indicates that only on the threshold of political change did royal power turn this prerogative into an instrument to grant land to its favorites and that it was an object of conflicts.

When states replaced tribes, manorialism was not yet the foundation of the agrarian structure in Swabia, Saxony, Norway, Poland, and Rus'. Even in a conquered country it was not possible to change the agrarian structure overnight. What was possible, though, was to impose tributary service on the population, basing it on the long-standing practice among the tribes. Such imposition did not change ownership relations and the social condition of those who had to pay the tribute, while the commonly known practice made it possible to somehow legitimize the economic requirements of the new authorities. The starting point of Christian statehood was, thus, similar from the Rhine to the Dniepr River, and the ruling groups there shared their tributary incomes with the Church in similar ways as well. In the part of *barbaricum* ruled first by the Carolingians and then by their German successors, this state of affairs was temporary, and the from historical perspective was merely an episode, while in the east, beyond the realm of Carolingian succession, the barbarian states turned the tributary exploitation of common people into a system that survived three or four centuries.

551 Tacitus, *Germania*, chapter 25.

Louis the German – if I may recall this obvious fact – was not a German. He was Charles the Great's grandson, a bilingual Frank and a bearer of the Roman legacy of the Merovingian and Carolingian rulers of Gaul. The king's entourage came from the same cultural background and was joined by members of the Alemannic, Bavarian, and Saxon aristocracies who were ready to adapt to it and collaborate. The values of classical culture and the Franco-Roman models of manorialism obviously clashed with barbarian collectivism, but it was not only the brutal force of the conquerors that was conducive to the breaking of their resistance.

Of course, there were innumerable acts of violence. The massacre of the Saxon prisoners of war carried out on the command of Charles the Great in 782 and the slightly later mass deportations can no doubt be associated, anachronistically speaking, with genocide or ethnic cleansings. Yet the political transformations were not carried out solely or even mainly by means of brute force. The Franks brought the new order to the Saxons not only on their spearheads but also by using their heads. Under the rule of Charles the Great, Louis the Pious, or Louis the German, they managed to inculcate the Saxon edelings with their own value system. The edelings joined the conquerors, creating a new elite together with them. Those who resisted were eliminated. The ruling group of Carolingian Saxony espoused and put into practice the ideal of an order based on manorialism, while royal immunity privileges subjected the free settlers to the master's jurisdiction. The Saxon aristocrats did not take part in the Stellinga uprising. Nithard's account leaves no doubt that despite the split between Lothair's and Louis's supporters, the edelings found themselves, together with the Franks, on the master's side of this class conflict. The assimilation by the entire ruling group of the Roman and Frankish values and models settled the direction and pace of political changes. Roman Germania incorporated and transformed German Germania in its own image and likeness.

Between the 10th and 12th centuries, the German, mostly Saxon, ruling groups incorporated the Polabian Slavic tribes in a similar way. In the relay race of expansion that was moving the legacy of Roman culture and the Carolingian political models eastward, German Germania played the same kind of role in relation to the Lusitzi, and later the Lutici and the Obotrites, that Roman Germania had played earlier in relation to the Alemanni, Bavarians, and Saxons. Otto I and, in particular, Henry the Lion obviously differed from Charles the Great, but the historical consequences of their conquests do not have to be ethnically differentiated. In this case, the dividing line drawn by Schlesinger obscures more than it clarifies. His German Germania and Slavic Germania taken together corresponded with Germany, and not only in the territorial

sense. What united them was also the common Carolingian genotype of the political order imposed by the conquerors: manorialism as a leitmotif of the agrarian structure, the considerable spread of vassal bonds, fiefs, and benefices, and the quick development of the immunity, followed by a feudal disintegration of the structures of public power. The entire part of *barbaricum* incorporated by the Frankish and then German conquerors can be jointly described as the realm of Carolingian succession.

Yet half of Europe lay outside that realm, including the Scandinavian part of the Germanic world and a substantial part of the Slavic regions. No conquerors from the west ever reached those places or imposed the legacy of the Roman civilization there. Neither the tribe's common people nor its elders ever experienced that legacy in their everyday life. It was the culture of barbarian collectivism that was the shared tradition of the common people and the ruling elites, and which included the founders of later native states. That tradition delineated the available paths of social transformation and gave the states that were coming into being in the 10th century in the north and the east of Europe a common shape that made them different from those in the realm of Roman and Carolingian succession. Those states entered the orbit of classical civilization through a reception of models that was undertaken at their own initiative, selectively, adequately to local needs and the possibilities determined by the collectivist structures of the traditional society.

Those models were taken from different regions. The rulers of Bohemia, Poland, and Hungary felt the irresistible gravitational force of the German civilizational centers. The first Přemyslids, Piasts, and Arpads accepted baptism and the clergy from Regensburg or Magdeburg, as well as the models of organizing the monarch's court and territorial administration that could be deployed in their states. At the same time, the Rurikids and the noblemen from their entourage remained under the equally irresistible charm of the Byzantine culture. Thus Rus' took baptism, its first bishops, and examples to follow from Constantinople. The division of Europe into the spheres of Latin and Byzantine Christianity proved, in the historical perspective, pregnant with serious consequences. At the turn of the 10th and 11th centuries, this was not yet predetermined. The models drawn from Byzantine and from the German successors to Rome were, of course, different, but there was not yet a sharp contrast or antagonism between the two currents of the classical legacy. Besides, in both cases what was at stake was only the reception of models by local ruling groups adopted suitably to their needs and situations and running along similar lines upon the Dnieper River, Vistula, Vltava, or Wáh. This is why I agree with Jenö Szücs's view that Prague, Esztergom, Gniezno, and Kiev had more in common

culturally and politically than the first three with Rome or the last one with Constantinople.[552]

A picture of the barbarian states of northern and eastern Europe cannot be painted with a single brush. The influence of the steppe nomads, especially the Avar Khaganate domination, and the subsequent invasion of the Hungarians may have contributed to the strengthening of the authoritarianism of ducal power among the nearby Slavic peoples. In Scandinavia, the sustained expeditions of the Vikings and the specific organization of military forces may have contributed to the survival of the judicial assembly system of the *herads* and of the protection of the social position of the common people (bonds) more efficiently than in the Slavic countries. Yet even in Poland, the ducal power could not do without the collaboration of the *opoles*, and so it could not arbitrarily trample on the personal and property rights of their inhabitants, even though the public jurisdiction was monopolized by the ruler and his officers. On the contrary, a respect for the inherited rights to land and the legal and social status linked to duties owed by different groups of peasants to the monarchy became a fundamental principle of the new system which in Polish historiography came to be called the system of ducal rights.

In this system, a substantial majority of the tribal common people was kept away from qualified military service and burdened with considerable tributes for the benefit of the monarchy, while the wealthier and better qualified minority converted itself into a separate class of ducal (royal) warriors. The duties performed for the state and inherited from generation to generation became an indicator of one's status as either a peasant or a knight. The free population, pushed in this way to the position of peasantry was not, however, subjected to anybody's fief, but only subjugated through the agency of the state to the authority of the wealthy elite. That subjugation and the mandatory tribute did not in themselves change property relations, nor did they deprive the peasant tribute payers of personal rights to which free people were entitled. What protected them from dispossession and slavery was both the *opole* community and the interests of the monarchy and the ruling elite intimately connected with it.[553]

The material position of the wealthy was based mainly on the share of the public tributes to which they were entitled as high public officials. Appointing, recalling, transferring, and promoting the officials was an unquestionable prerogative of the ruler. It was generally thought that he should take the candidates solely from the

552 Szücs, *Les trios Europes*, p. 21f.

553 Modzelewski, *Chłopi*, especially chapter V.

class of aristocracy, who therefore treated the people's tributes for the state as a common good. Depleting that good through an immunity met a difficult to overcome barrier, because the objections on the part of the nobleman directly wronged met with a favorable reaction from the wider circle of the ruling group. In order to transcend that barrier, the rulers of 12th century Poland found a formula palatable to everyone. In those places where town districts were liquidated for some reason, the ruler gave the bishops the official duties and incomes due to the castellans, rather than to the duke's people with their land and tributes. Unlike the lay noblemen, however, the bishopric received that official authority forever. It could gradually widen its range, and as a result, a bishop's castellany would become a landlordship. In the 12th, and even still at the beginning of the 13th century, such castellanies constituted the lion's share of the bishops' properties.[554]

It was not everywhere that the rulers resorted to such methods, but it was not only in Poland that they encountered such difficulties. Nowhere in these lands – from the Oder to the Volkhov and the Dnieper River, and from the Norwegian coasts to the Danube – did the creation of new barbarian states remove the barriers limiting manorialism. Kings and dukes did indeed give no man's land for development to the Church and noblemen of outstanding merit, but it was the slaves and the declassed people who constituted the labor force needed to clear and cultivate the land. The core of the peasant population of those countries retained the crucial attributes of the free condition and the inherited rights to land, and was subject only to royal authority. Unlike the territories of the Carolingian succession where royal power, the Church, and noblemen concertedly aimed at imposing manorialism on the free commons, the ruling groups of the new states of northern and eastern Europe formed out of the collectivist tradition and interested in a share of the royal income from tributes were a conservative force rather than a motor of fast changes. The system in which the aristocratic elite ruled the village population by means of the state demonstrated exceptional resilience here.

In Bohemia, Hungary, and Poland the gradual dismantling of that system took place in the 13th century. Elsewhere – on the Russian territories of the Grand Duchy of Lithuania, for instance – that system lasted much longer. The main initiator of the dismantling of the *ius ducale* was everywhere the Church. Its persistent manoeuvres with time changed the attitudes of the kings and the dukes, and finally, also of the lay noblemen towards immunity. In the late Middle Ages, the agrarian structure of the countries of "younger Europe"[555] approximated the western

554 Modzelewski, "Między prawem."

555 I obviously borrow the term from Kłoczowski, *Młodsza Europa.*

standards. But the feudal institutions – vassalage, fiefdom, benefice grants of estates – took long to take root there or did not take root at all. The disintegration of state structures through private local and territorial dominions did not take place here either. The formation of regional duchies in Poland did not have, as Karol Buczek rightly observes, anything to do with "feudal fragmentation." This term functioned, in fact, as camouflage or the protection money that Polish medievalists had to pay half a century ago, playing their own peculiar hide-and-seek game with the guardians of the then-obligatory ideological patterns.

If we are to understand feudalism in the way it is understood in contemporary medieval studies, then it needs to be stated that eastern Europe did not experience feudalism. This is not, perhaps, a matter of the greatest importance as the theory of the general prevalence of the "feudal formation" in the history of humankind once was. Vassalage, fiefdom, or local dominions did not form the foundations of a social and economic order anywhere. The presence or absence of those institutions can, however, be considered a symptom of the very important differences that – despite the considerable assimilation of the agrarian structure and the reception of many models – still divided the west from the east of medieval Europe. Those differences had their roots in the barbarian legacy and left an indelible mark on the history of our continent.

The assertions about the Christian origins of Europe that I mentioned at the beginning of this book became, before I reached the epilogue, the subject of a political dispute regarding the preamble to the constitution of the European Union. The atmosphere of those disputes is not conducive to historiography, but we have to do our job. While I obviously do not intend to deal with the preamble and the constitution, it is appropriate to note, however, that the sentence in dispute is understood in a way that simplifies and reduces the historical role of Christianization. It simplifies it because the cultural roots of Europe are heterogeneous and cannot be reduced solely to the Mediterranean and Christian legacy. It is also reductive because the Christianization of the barbarian peoples entailed much more than the simple integration of matters of faith and cult. No one today believes in the so-called "base and superstructure" concept anymore, but the scientific tradition from a century and a half ago still shapes popular conceptual patterns. On the grounds of this tradition, spiritual culture is represented as a phenomenon secondary to the economic and social realities of life. Meanwhile, the baptism of the new peoples was not a derivative but a beginning of systemic change. Baptism had a dimension of social revolution; it undermined the foundations of the traditional system of the European tribes, destroyed it, and paved the way for a new order. Much, and rightly so, has been said and written on the very important role of Christianity in the creation of that order. It is also worth

noting the other side of the coin, and look at the baptism of the barbarian peoples as an act of destruction.

Strabon notes that in the times of his expedition against the Triballi, Alexander the Great received the Celtic envoys and asked them what they were afraid of. "Nothing," he heard them respond, "except the sky falling down on our heads."[556] These words, popularized by the authors of the charming comics about the adventures of Asterix, merit a deeper reflection. The fear of the sky falling down was not unknown to the Germanic peoples. According to Livy, the Bastarnae feared it as well (*coelumque in se ruere aiebant*).[557] The Roman historian linked this to storms and lightning. What was also, or perhaps primarily, at stake was the fear of a cataclysm threatening the order of the world. In *Translatio sancti Alexandri*, Rudolf of Fulda ventured to explain in Latin the name of the Saxon idol overthrown by Charles the Great after the conquest of Eresburg in 772: "[The Saxons] worshipped like a god a huge tree trunk erected high, calling it in their own language Irminsul, which in translation into Latin means a common pillar as if supporting everything" (*Irminsul* […] *quod latine dicitur universalis columna, quasi sustines omnia*).[558]

Sul, in contemporary German, *Säule*, indeed meant a pillar, a column or a support post. Thus, irrespective of how we interpret the name (*Irmin*), there is no doubt that Irminsul had the shape of a post, so characteristic of Germanic and Slavic cult figures, topped with a sculptured image of the head or face of the deity. More importantly, the very name of the figure from somewhere around Eresburg and the explanation it receives from Rudolf indicate that according to the Saxons, the deity, represented as an anthropomorphic post, "supported everything," that is, it bore the vault of the world. Comparing such references from northern and southern Germany and Scandinavia, Jan de Vries states that such a "representation of the post of heavens" (*Die Vorstellung einer Himmelssäule*) had a trans-Germanic scope. Aleksander Gieysztor draws our attention to traces of similar cosmogonic representations found by ethnographers in Slavic folklore: "The sky […] is supported by a post that touches the pole star, the only immovable part […] while the heavenly dome rotates."[559] The "post of an astounding size" (*columna mirae nagnitudinis*) that, according to Ebon (lib. III, 1), towered in the sanctuary of the Wolinians probably embodied the same conviction about the sacred support of the world as the Saxon Irminsul. When the enemy ostentatiously destroyed that pillar

556 Strabon, VII, 3, 8.
557 Livy, XL, 5.
558 TSA, chapter 3, p. 376.
559 De Vries, *Altgermanische Religionsgeschichte*, p. 386f.; Gieysztor, *Mitologia*, p. 84.

of the cosmic order, the Barbarian Saxons or Wolinians had reasons to fear that the sky would indeed collapse on their heads.

This is not about the superstitious fear of ignorant people. Nothing bars the path to the understanding of archaic cultures more than the vulgar contempt of the civilized person for the otherness of the barbarians. We know the words of the pagans who expressed fear of Christianization only from hagiographic, or at any rate Christian, accounts about the deeds of the missionaries. These are sources burdened with multiple misunderstandings, but they contain information of primary importance. Without going into the complexity of source-related issues, I will only take the liberty of citing for the purpose of illustration the words that were ascribed to pagan Prussians in the two oldest lives of St. Adalbert of Prague.

Both hagiographers – John Canaparius and St. Bruno of Querfurt – give very similar accounts of the banishment of the missionaries by the Prussians. The circumstances of the event suggest that this was a decision of the assembly. Adalbert was summoned in order to reveal to the gathered people why he had come. After they listened to the story of the saint about the aim of his mission, those gathered ordered the missionaries to leave their country immediately. The decision was accompanied by aggressive words of justification. According to John Canaparius, the pagans "hitting the sticks on the ground […] shout against him menacingly: we and this whole country […] must follow a common law and one lifestyle. You, on the other hand, who are governed by a different and unknown law, if you do not leave this night, you will be beheaded tomorrow." Bruno of Querfurt's version is lengthier and in part different. After Adalbert's short speech, the pagans

> deride the divine words, hit their sticks on the ground, […], they nevertheless do not raise their hands against him but shout and hurl words of unrelenting hostility at the missionaries' ears. "Because of such people," they say, "our land will yield no crops, the trees will bear no fruit, new animals will stop having their young, the old will die. Go out, go out from our land! If you do not go as quickly as possible, you will die a miserable death, tormented with horrible punishments." They threaten with death the man who, placed on the edge of their state, let the newcomers come up to this place. Foaming with rage they announce that they will burn his house, share his belongings, sell his wives and sons.[560]

All such speeches in the medieval narrative sources must be treated with a pinch of salt; they are largely products of authorial imagination. It seems, however, that in this case the authors used a credible plot. The hitting of the sticks on the ground that they treated as a way of expressing fury did not – as St. Bruno noticed – bear

560 *Sancti Adalberti Vita Prior*, chapter 18; *Sancti Adalberti Vita Altera*, chapter 25.

any sign of direct physical aggression. It was most probably the ritual of the assembly acclamation analogous to the Germanic "shaking of spears" (*vapnaták*). What is also fully credible in Bruno's account is the information about the punishment imposed – at the same assembly and together with the decision of expelling the missionaries – on their fellow tribesman who had let the missionaries in. The threat of burning his house, sharing his belongings, and selling his wives and sons into slavery corresponds to the old Russian exile (*vydadjat' i samogo vsego z ženoju i z detmi na potok i na rozgrablenie*) and to the repressions Thietmar mentions for open resistance to the decisions of the Veleti assembly (burning of the house and "constant plunder" of movable property).[561] We should not, therefore, disregard the other information given by the hagiographers concerning the same event. After all, both lives were written shortly after Adalbert's martyr death, and Bruno of Querfurt drew information directly from Radim Gaudentius, whom he knew well, and from the other participants of the mission. The accounts of both hagiographers allow us to conclude that the Prussians considered Adalbert's mission an immediate threat.

According to John Canaparius, what was threatened by Adalbert's mission was the social order ("of the common law and one lifestyle"). In Bruno's view, on the other hand, what was threatened was also, or even primarily, the material foundation of the existence of the community. We should not look at this difference between the two accounts through the prism of modern rationalism. The Prussians would not have seen any contradiction here, and they could have successfully combined both motifs. In their understanding, the pagan *sacrum* was the "column of the world," simultaneously a guarantee of the social and natural orders. Overturning that column threatened catastrophe, so expelling the missionaries and finally killing them when they came back despite the decision of the assembly was from the point of view of the Prussians a necessary act of self-defense.

What filled the barbarians with horror was not so much the alien god as the requirements of monotheism. There is ample evidence that the pagans were ready to include Christ into their pantheon, as they questioned neither his existence nor his power. When a plague broke out in Szczecin soon after St. Otto's first mission, the inhabitants decided to worship both their native gods and the "German" god of Christians.[562] This combination did not compromise their elementary sense of the security of their traditional community. Baptism itself did not frighten them. What frightened them was the radical, ostentatious destruction of the old cult,

561 PrP, article 7; Thietmar, VI, 25.

562 VP, III, 5, p. 62; Ebo, III, 1, p. 94; Herbord, III, 16, p. 177.

thanks to which the world existed, that accompanied the assumption of the new religion.

In addition, the missionaries demanded that the destruction of sacred places and figures precede collective baptism,[563] and that they be destroyed publicly and in a shocking manner before the gathered crowds of worshippers. In Arkona, which had been taken by the Danes, such a crowd (*ingens oppidanorum frequentia*) saw how the armed conquerors destroyed one after another the taboo circles; how they dismantled the fence around the temple and stripped down the curtains that had concealed the statue; how they ordered the servants to cut the legs of the sacred figure; how they put a rope around the god's neck and dragged him to the campground of the victors so that the kitchen attendants could chop it there into firewood.[564] This was a deliberate demonstration, a calculated sacrilege meant to show the pagans the impotence of their deity and thus convince them to abandon their traditional cult. Herbord justified Otto of Bamberg's conduct in a similar way. When the missionaries began to destroy Triglav's temple in Szczecin, "the inhabitants were standing [around] and looking to see what the wretched gods would do – will they defend their homestead or not. And when they saw that nothing happened to the destroyers, they said: If [the gods] cannot defend themselves, how can they defend or help us?"[565]

Besides the social-engineering calculations on the part of the missionaries, more complex motives, emotions, and cultural conditions were surely important to both sides. In Gardziec, which had belonged to the Principality of Rügen, the Danish bishop, Swen, stood on the figure of Rugiewit that was being dragged outside the town walls, and with this gesture of triumph he intensified – as Saxo Grammaticus writes – the weight of the insult (*contumelia*) and disgrace (*rubor*) to the pagan cult.[566] We should also remember the models from the Old Testament that shaped the Christian missionaries' relation to the material objects of pagan cult.

Shared notions of the biblical models of value judgments and norms of behavior is what the Danish archbishop, Absalon, and Otto of Bamberg had in common with the Byzantine clergy who led the Christianization of Rus'. It was at their inspiration that Vladimir the Great, on the eve of the collective baptism of the Kievans, had the sanctuary built eight years earlier on the hill opposite his residence destroyed.

563 Herbord wrote about this requirement explicitly, II, 30, p. 121. Wolfger of Prüfening did as well, VP, II, 11, p. 42.

564 Saxo, XIV, 39, p. 472f.

565 Hebord, II, 31, p. 122.

566 Saxo, XIV, 39, p. 475f.

> He ordered the idols to be demolished. Some were to be chopped while others consumed with fire. He gave orders to tie Perun to a horse tail and to drag it downhill through Boričev to the Ručaj river. And gave orders to 12 men to beat it with sticks. This was not because wood could feel but to mock the devil that deceived the people with his image. Let him take his due from the people (*se že ne jako drevu čujušču, no na poruganʹe běsu, iže prelščaše simʹ obrazom čelověky, da vʹzmezdʹe priimetʹ ot čelověk*).

The learned monk, who recorded the event at the birth of Russian annals, tried to interpret Perun's ill-treatment in accordance with the requirements of theological correctness.[567]

For the pagans, this spectacle was a highly traumatic event. Some sources noted the external manifestations of their shock. The oldest chronicle mentions the reaction of the people gathered in Kiev at the sight of the dragged and beaten Perun: "And when he was being dragged along the Ručaj river to the Dnieper River, his infidel people cried because they did not accept baptism yet" ([sic!] *plakačusja jego neverni ljude, ješče bo ne bjachu prijali svjatogo kreščěnʹja*). A similar thing happened when Svetovid was being dragged, tied to a rope: "different sounds could be heard from the gathered inhabitants of Arkona: some despaired over the harm done to their god; others burst out laughing" (*aliis dei sui iniurias lamento aliis risu prosequentibus*).[568] Saxo adds that the most reasonable ones were probably ashamed of their vulgarity, as they saw the stupidity of the cult they had practiced for years (*Nec dubium, quin ingens oppidanorum parti rubor incesserit, simplicitatem suam tot annis tam stulido cultu delusam cernentibus*). That platitude could not, however, hide the tragedy. The distinction of *sacrum* and *profanum* was alien to the traditional cultures. There was no place for secularism here. To them the death of their gods meant the end of their world.

As a matter of fact, it was the beginning of the end. The ostentatious acts of destruction touched only the tip of the iceberg at first. Only those cult institutions knitted together with the main political bodies of the tribal community got destroyed. In the everyday life of the neighborhood communities, clans, and families, pagan cult retained its important position for a long time yet. The values and models of the traditional culture lingered on longer than the cult itself. The abolition of Irminsul, Svetovid, or Perun was, however, a turning point because it amounted to the destruction of the religious keystone of the political organization of the tribes. Local and general assemblies, deprived of the pillar of pagan *sacrum* and the authority of the oracle, were irreversibly losing their significance. At the same time, the significance of the king (duke) grew. Freed from the limitations

567 PVL, vol. I, p. 80.

568 PLV, vol. I, p. 80; Saxo, XIV, 39, paragraph 33, p. 473.

imposed by the assembly and supported by the Church, the king took advantage of the traditional prerogatives of the great relative, great warrior, and great neighbor in order to transform himself from the leader of his tribe into the ruler of a trans-tribal state. The place of the traditional elders was taken by a ruling elite centered around the king. The twilight of the assembly institutions allowed for the replacement of the organization of the tribal communities that had consisted of different segments with the more integrated political structures of medieval monarchy.

Baptism was one of the most significant conditions for that revolution and simultaneously the starting point of a slow evolution: the centuries-long process of the Christianization of the barbarian societies and the reception of the models of classical culture. The reception of those models drew East and West closer, yet it never brought about a full uniformity. Relying on a meticulous analysis of medieval texts, and on the achievements of ethnography, Aleksander Gieysztor has noted that "Slavic folklore […] has for a very long time, almost up to the present, retained the fabric of the traditional world view and its sacred projection."[569]

It is worth citing from Geysztor's *The Mythology of the Slavs* an intriguing comparison of the words of a pagan priest from before 1168 with the words of a village Orthodox priest from the beginning of the 20th century. According to Saxo Grammaticus, every year after harvest the Rugians gathered in Arkona before the temple of Svetovid for a major cult celebration. At the culminating point of the ritual, just before the sacrificial feast, a round yeast cake the size of which almost matched the height of a human being was brought. "The priest raised it before him [literally: between himself and the people] and asked the Rugians if they could see him from behind [the cake]. They answered that they could see him, and he wished them that they could not see him the next year. It was a wish for a more abundant harvest the following year" (*Quam sacerdos sibi ac populo mediam interponens, an a Rugianis cerneretur, percontari solebat, Quibus illum a se videri respondentibus, ne post annum ab iisdem cerni posset, optabat. Quo precationis* […] *futura messis incrementa poscebat*). Gieysztor then draws our attention to a Bulgarian Orthodox custom from the beginning of the 20th century where the same wish was expressed by an Orthodox priest on the day of a local celebration: "The priest stood behind a sacrificial pile of round loaves of bread and asked the gathered people loudly: 'Can you see me?' They answered: 'Yes, we can see you.' Then the priest said: 'May you not see me next year,' hoping that the harvest would be even more abundant."[570]

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569 Gieysztor, *Mitologia*, p. 259.

570 Saxo, XIV, 39, pp. 465–466; Gieysztor, *Mitologia*, p. 103.

Despite Christianization, the passage of eight centuries, and the geographic distance separating the north-western and southern ends of the Slavic world, we have an identical ritual dialogue between the priest and the faithful. A common pan-Slavic fabric from pagan mythology must have been woven at the origin of this ritual. What mechanisms allowed this ritual and its sacred function to survive under the thin layer of Christian varnish almost to our times? There is no satisfactory answer to this question unless one is satisfied with a sleek but hollow statement about the traditionalism of folk culture. The fact that we do not know how the pagan ritual had been passed from generation to generation over the long centuries in a Christian country does not entitle us to negate the obvious evidence of its survival.

This concerns not only the traces of pagan *sacrum* but also the presence of the barbarian legacy in politics, the judiciary, vocabulary, and the conceptual categories of European culture. In history classes, every Polish child encounters the term *liberum veto*. Those who are better-read are familiar with the vivid details connected with the functioning of the principle of unanimity of the *sejmik* (*dietine*; a local parliament) and *sejm* (parliament) resolutions. They understand that he who had thwarted a decision by shouting *Nie pozwalam!* ("I do not allow!") frequently had to run away, so that the participants of the assembly did not force him under the threat of a saber to withdraw his objection.[571] Thietmar's account about how sticks were used to enforce the unanimity of resolutions at the Veleti assembly points to the very old tribal origins of the seventeenth-century customs of the *sejmik*. We do not know how the old Slavic model of the assembly survived to the times of the first Republic of Poland, yet it does seem that indeed it did.[572]

Elements of the barbarian legacy can still be found in Europe today. They even appear on other continents where they were brought by Europeans. The citizens

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571 This is what happened in 1652 when the *sejm* was closed for the first time as a result of one deputy's objection. Władysław Siciński of Upytė was that deputy. He declared: "'I do not agree to the prolongation' (of the session) and before the other deputies understood what happened, he left the chamber" (Czapliński, *Dwa Sejmy*, p. 122). In *Powrót posła* (*The Return of the Deputy*), Niemcewicz represents it explicitly, and even bluntly: "he screamed 'I do not allow it' and escaped to Praga." See Konopczyński, *Liberum veto*; see also Macieszewski, *Szlachta polska*, pp. 200–203.

572 Several years ago professor J. Chrościcki drew my attention to this in a discussion about a paper on west Slavic assemblies which I presented at the Scientific Center of the Polish Academy of Sciences in Paris. The *sejmiks*, as the assemblies of local communities before them, may have been the institution within which the archaic requirement of unanimity survived.

of the United States are proud of their judiciary, yet most are unaware of the origins of the requirement of the unanimity of a jury's decision. The members of the jury themselves do not associate their function with the old Germanic model, already codified in the norms of the Salic law, concerning the *rachinburgi* and the *thunginus*. After reading the Salic law, this association is more than apparent. No wonder that the excellent editor of that source, Karl August Eckhard, translated the term *rachinburgi* in German as *Geschworene* (the sworn).[573]

In Poland each of us has sang, or heard others sing, or at the very least read *Rota* (*The Oath*). The text, written by Maria Konopnicka in 1908, functioned during the stormy years of the 1980s in the twilight of the People's Republic of Poland as a hymn of the peasants. It was also adopted as a church song. The words: "We are the Polish nation, the Polish people, from the royal line of Piast" are commonly known, but few ponder over their lexical meaning. But remnants of the old conviction that we all have in common a kinship with the ancestor of the Polanian dynasty reverberate in these words. This is an unconsciously repeated archetype of the blood ties that cemented fellow tribesmen with the king and with one another. The Polish expression still used in contemporary Polish to describe civil war, *walka bratobójcza* ("fratricidal fight"), also derives from the same archaic conceptual stock. The national bond replaced the tribal bond, but it simultaneously both took over and retained some of the traditional notions and symbols that in the remote past referred to an ethnic tribal community smaller and older than the nation.

Let us spare ourselves the trouble of speaking about the Corsican and Sicilian *vendetta*, its Albanian equivalent, or other examples of the longevity of the notions of the collective honor, collective disgrace, and collective responsibility of kinship groups. Inventorying and analyzing such relics are a task for anthropologists and sociologists, whom a historian of the Middle Ages can at best assist with expertise. The more difficult to capture but also more widespread elements of the barbarian legacy seem more significant to me than the eye-catching peculiarities. We can find them everywhere, for there are no regions in Europe where barbarian collectivism did not appear, even if only episodically.

It did not perish without traces. Christianization brought an expansion of the classical culture and a rebuilding of the social order based on its models. It was not, however, a unilateral influence but an interaction. The clergy and the kings were not capable of handling everything alone. Baptism was the turning point

573 *Die Gesetze des Merowingerreiches,* edited by K. A. Eckhard, vol. I, Weimar 1934, pp. 75, 83, 85; the same in the new edition, *Pactus Legis Salicae*, Göttingen 1955.

that brought about the destruction of the world of barbarians. But not all of that world – if I may paraphrase the Roman poet – has died (*non omnis moriar*). The barbarian cultural legacy is, alongside the Roman and Byzantine, a crucial element of the complex European identity. It is also a diversifying factor. The balance of the mutual influences of classical culture and the traditional cultures of *barbaricum* is highly varied, and that diversity is present in contemporary Europe. It has been, at times is, and may yet again be a source of divisions and tensions. This is worth remembering, let alone for the sake of disinterested curiosity. Contrary to Fukuyama's claims, history has not ended at all.

List of Abbreviations: Names of Journals and Serial Publications

Annals ESC	–	Annales Économies-Sociétés-Civilisations
Annales HSS	–	Annales. Histoire, sciences socials (continuation of Annales ESC)
Bullettino dell' ISIME	–	Bulletino dell' Instituto Storico Italiano per il Medio Evo
HRG	–	Handwörterbuch zur deutschen Rechtsgeschichte
HZ	–	Historische Zeitschrift
KH	–	Kwartalnik Historyczny
MGH	–	Monumenta Germaniae Historica
MIŐG	–	Mitteilungen des Őesterreichischen Instituts für Geschichtsforschung
MPH	–	Monumenta Poloniae Historica
NS	–	Nova series
PH	–	Przegląd Historyczny
RGA	–	Reallexikon des germanischen Alertumskunde
SCIAM	–	Settimane di studio del Centro Italiano di Studi sull'Alto Medioevo
HS	–	Studia Historyczne
ss	–	scriptores
ss rer. Merov.	–	scriptores rerum Merovingicarum
ss rer. Lang.	–	scriptores rerum Langobardicarum et Italicarum
SSS	–	Słownik Starożytności Słowiańskich
SŹr.	–	Studia Źródłoznawcze – commentationes
ZRG GA	–	Zeitschrift der Savigny-Stifung für Rechtsgeschichte, Germanistische Abteilung

Primary Sources and their Abbreviations

Adam of Bremen	–	*Magistri Adami Bremensis gesta hammaburgensi Ecclesiae Pontificum*, B. Schmeidler, Hannover-Leipzig 1917.
AEinh.	–	*Annales quo dicitur Einhardi*, F. Kurze, Hannover 1895.
Aist.	–	Aistulfi leges, [in:] LL, pp. 249–263.
Amm. Marc.	–	Ammianus Marcellinus, *Res gestae*, vol. I–II, W. Seyfarth, Leipzig 1978.
		Annales Bertiniani, G. Waitz, Hannover, 1883.
Ann. Fuld.	–	*Annales Fuldenses,* F. Kurze, Hannover 1891.
		Annales Laureshamenses, [in:] MGH ss, vol. I, G. H. Pertz, Hannover 1826 (reprinted in 1976).
		Annales Maximiani, [in:] MGH ss, vol. XIII, G. Waitz, Hannover 1881.
		Annales Mosellani, [in:] MGH ss, vol. XVI, G. H. Pertz, Hannover 1859 (reprinted in 1994).
ARF	–	*Annales Regni Francorum*, F. Kurze, Hannover 1895.
		Annales Xantenses, B. von Simson, Hannover 1909.
Bede, HEGA	–	*Venerabilis Bedae historia ecclesiastica gentis Anglorum*, G. Spitzbart, Darmstadt 1982.
Böhmer – Mühlbacher	–	J. F. Böhmer, *Regesta Imperii. Die Regesten des Kaiserreichen unter den Karolingen 751–918*, E. Mühlbacher, Hannover 1909.
CDB	–	*Codex diplomaticus Bohemiae*, vol. I, G. Friedrich, Praha 1905.
CDF	–	*Codex diplomaticus Fuldensis*, second edition, E. F. Dronke, Aalen 1962.
CDLS	–	*Codice diplomatico Longobardo*, vol. I–II, L. Schiaparelli, Roma 1929–1933.
CEur.	–	*Codex Euricianus*, [in:] *Leges Visigothorum*.
Caesar, BG	–	Caius Iulius Caesar, *Commentarii rerum gestarum*, vol. I, *Bellum Gallicum*, O. Seel, Leipzig 1961.

		Chronicon Moissacense, [in:] MGH ss, vol. I, Hannover 1826.
Cod. Laur.	–	*Codex Laureshamensis*, vol. I–III, K. Glöckner, Darmstadt 1929–1933.
Cosmas	–	*Cosmae pragensis Cronica Boemorum*, MGH ss ns, vol. II, B. Bretholz, Berlin 1923.
CPS	–	*Capitulatio de partibus Saxoniae*, [in:] LST, pp. 37–44.
CRF	–	*Capitularia Regum Francorum*, vol. I, A. Boretius, Hannover 1883.
CS	–	*Capitulare Saxonicum*, [in:] LST, pp. 45–49.
		Digesta, [in:] *Corpus iuris civilis*, vol. I, A. and M. Kriegell, Leipzig 1870.
DKM	–	*Dokumenty kujawskie i mazowieckie przeważnie z XIII w.*, B. Ulanowski, *Archiwum Komisji Historycznej Akademii Umiejętności*, 4, 1888.
DO I	–	*Diplomata Ottonis I*, [in:] *Die Urkunden Konrad I, Heinrich I Und Otto I*, Th. Sickel, Hannover 1879–1884 (reprinted in 1980).
DRH	–	*Decreta regni medievali Hungariae*, vol. I, J. H. Bak, G. Bónis, J. R. Sweeney, Idyllwild, 1999.
Earle-Plummer	–	*Two of the Saxon Chronicles Parallel*, J. Earle, C. Plummer, Oxford, 1892.
Ebo	–	*Ebonis vita Ottonis episcopi Babenbergensis*, MPH ns vol. VII, 2nd edition, J. Wikarjak, K. Liman, Warszawa 1969.
Fredegar	–	*Chronicarum que dicuntur Fradegarii Scholastici* libri IV, MGH ss rer. Merov., vol. II, B. Krusch, Hannover 1888.
Frost. (Frostathingsbók)	–	*Den aldre Frostathins* – Lov, "Norges gamle loveindtil 1387," vol. I, Christiania 1846, pp. 121–258, R. Keyser, P. A. Munch.
Grágás	–	Grágás, *Islaendernes Lovbog*, V. Frisen, Kjobenhavn 1852 (reprinted in 1974).
GTHF	–	*Gregorii episcopi Turonensis historia Francorum*, MGH ss rer. Merov., vol. I, 1, B. Krusch, W. Levison, Hannover 1951.

Gul. (Gulathingsbók)	–	*Den eldre Gulathingslove*, B. Eithun, M. Rindal, T. Ulset, Oslo 1994.
Helmold	–	*Helmoldi presbyteri Bozoviensis Chronica Slavorum*, B. Schmeidler, Hannover 1937.
Herbord	–	*Herbordi dialogus de vita s. Ottonis episcopi Babenbergensis*, MPH ns, vol. VII, 3, J. Wikarjak, K. Liman, Warszawa 1974.
HLiv.	–	*Henrici Chronicon Livoniae*, A. Bauer, Darmstadt 1959.
		Ibrahim, *Relacja Ibrahima ibn Jakuba z podróży do krajów słowiańskich w przekazie Al-Bekriego*, MPH ns, vol. I, T. Kowalski, Kraków 1952.
Jordanes	–	*Iordanis de origine actibusque Getarum*, F. Giunta, A. Grillone, Roma 1991.
KMp	–	*Kodeks dyplomatyczny Małopolski*, vol. I–IV, F. Piekosiński, Kraków 1876–1905.
KPol.	–	*Kodeks dyplomatyczny Polski*, L. Rzyszczewski, A. Muczkowski, vol. I, Warszawa 1847.
KrP	–	*Kratkaja Pravda*, [in:] *Pravda Russkaja*, vol. I, texts, B. D. Grekov, Moskva-Leningrad 1940.
		Księga henrykowska, R. Grodecki, Poznań 1953.
KWp	–	*Kodeks dyplomatyczny Wielkopolski*, vol. I–IV, T. Zakrzewski, vol. V, F. Piekosiński, Poznań-Kraków 1877–1908; vol. VI–VIII, A. Gąsiorowski, Warszawa-Poznań 1982–1989.
LA1	–	*Lex Alamannorum*, [in:] *Leges Alamannorum*, MGH Leges nationum Germanicum, vol. V, 1, K. Lehman, Hannover 1888.
LBaiuv.	–	*Lex Baiuvariorum*, MGH Leges nationum Germanicarum, vol. V, 2, W. von Schwind, Hannover 1926.
LC (*Liber constitutionum*)	–	*Leges Burgundionum*, MGH Leges nationum Germanicarum, vol. II, 1, L. R. von Salis, Hannover 1892.
LFCh	–	Lex Francorum Chamavorum, R. Sohm., [in:] MGH, Leges (in folio), vol. V, Hannover 1875–1889 (reprinted in 1987)

LFris	–	*Lex Frisionum*, K. A. Eckhardt, A. Eckhardt, Hannover 1982.
Li	–	*Liutprandi leges*, [in:] LL, pp. 127–232.
Livy	–	Livius Titus, *Ab urbe condita*, vol. I–II, R. S. Conway, C. F. Walters, Oxford 1960.
Lieberman, GA	–	*Die Gesetze der Angelsachsen*, vol. I, F. Lieberman, Aalen 1960 (reprint of the 1903 edition).
LL	–	*Le leggi dei Longobardi*, C. Azzara, S. Gasparri, Milano 1992.
LRB	–	*Lex romana Burgundionum*, [in:] MGH Leges nationum Germanicarum, vol. II, 1, R. von Salis, Hannover, 1892.
LRib	–	*Lex Ribuaria*, F. Beyerle, R. Buchner, Hannover 1956.
LSax	–	*Lex Saxonum*, [in:] LST, pp. 17–34.
LST	–	*Leges Saxonum Und Lex Thuringorum*, C. von Schwerin, Leipzig 1918.
LThur	–	*Lex Thuringorum*, [in:] LST, pp. 57–66.
LUN	–	*Urkundenbuch für die Geschichte des Niederrheins*, vol. I–IV, T. J. Lacomblet, Düsseldorf 1840–1858.
LVisig	–	*Leges Visigothorum*, MGH Leges nationum Germanicarum, vol. I, K. Zeumer, Hannover-Leipzig 1902.
Maurikios – *Strategikon*	–	*Das Strategikon des Maurikios* (Corpus fontium Historiae Bizantinae, vol. XVII, G. T. Dennis, E. Gamillscheg Wien 1981.
Nithard	–	*Nithardi Historiarium libri IV*, E. Müller, Hannover-Leipzig 1907.
NZ	–	*Najstarszy zawód prawa polskiego*, J. Matuszewski, Warszawa 1959.
OGL	–	*Origo gentis Langobardorum*, A. Bracciotti, Roma 1998.
Ovidiuis, Tristia	–	*Ovidii Nasonis Tristium libri quinque*, S. G. Owen, Oxford 1959.
PA1	–	*Pactus Alamannorum*, [in:] *Leges Alamannorum*, MGH Leges nationum Germanicarum, vol. V, 1, K. Lehmann 1888.

PDHL	–	Paolo Diacono, *Storia dei Longobardi*, Lidia Capo, Verona 1995.
PLS	–	*Pactus Legis Salicae*, MGH Leges nationum Germanicarum, vol. IV, 1, K. A. Eckhardt, Hannover 1962.
Procop (Gothic War)	–	*Procopii Caesareiensis opera omnia*, vol. II, *De bellis libri V–VIII*, J. Haury, G. Wirth, Leipzig 1963.
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Author's Note Regarding the Translations of the Primary Sources

I have always translated the sources myself, both out of necessity and faithfulness to my profession. To avoid some of the pitfalls of double translation, the translator of the English edition of my book has drawn from existing English translations of the medieval and ancient sources. The following is a list of the sources of the translations used in this book. The reader should be aware, however, that while I am by no means an expert in the English language, I have found many instances where I did not agree with the translators and so have made some alterations to the texts.

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Karol Modzelewski

Barbarian Europe

European culture has been greatly influenced by the Christian Church and Greek and Roman culture. However, the peoples of Europe's remote past, whom the Greeks, Romans, and their medieval heirs called the "barbarians," also left their mark. Closely examining ancient and medieval narratives and the codifications of laws, this thoughtfully conducted comparative study sheds light on the illiterate societies of the early Germanic and Slavic peoples. The picture that emerges is one of communities built on kinship, neighborly, and tribal relations, where decision making, judgement, and punishment were carried out collectively, and the distinction between the sacred and profane was unknown.

The Author
Karol Modzelewski is a medieval historian and member of the Polish Academy of Sciences and the Italian L'Accademia dei Lincei. Now retired, he was a professor at the University of Warsaw. One of Poland's most prominent dissidents of the communist era, he is credited with giving the trade union "Solidarity" its name. He served in the Senate after Poland's first free elections in 1989 before returning to academia.